

TABLE OF EXHIBITS
IN SUPPORT OF GREAT LAKES' RESPONSE TO AT&T FORMAL COMPLAINT

EXHIBIT	DOCUMENT
1	Rebuttal Testimony of John W. Habiak , on behalf of AT&T Corp, in Michigan Public Service Commission Case No. U-17619, at 4-5 (September 11, 2014)
2	Great Lakes' Settlement Offer of May 8, 2014 *CONFIDENTIAL MATERIALS OMITTED*
3	Great Lakes' Settlement Offer of May 23, 2014 *CONFIDENTIAL MATERIALS OMITTED*
4	Great Lakes' Settlement Offer of June 30, 2014 *CONFIDENTIAL MATERIALS OMITTED*
5	Great Lakes' Settlement Offer of August 2, 2014 *CONFIDENTIAL MATERIALS OMITTED*
6	Great Lakes' Settlement Offer of June 19, 2015 *CONFIDENTIAL MATERIALS OMITTED*
7	Great Lakes' Settlement Offer of February 16, 2016 *CONFIDENTIAL MATERIALS OMITTED*
8	Great Lakes' Settlement Offer of August 3, 2016 *CONFIDENTIAL MATERIALS OMITTED*
9	AT&T's Settlement Offer of June 26, 2015, including email exchange between M. Hunseder and D. Carter following offer *CONFIDENTIAL MATERIALS OMITTED*
10	Expert Report of Michael Starkey, with Exhibits A-D (August 18, 2014) *HIGHLY CONFIDENTIAL MATERIALS OMITTED*
11	Order Terminating Reporting Requirements , IUB Docket No. M-3798 (July 15, 2016)
12	Excerpted pages from the Deposition of Josh Nelson (November 6, 2014)
13	Excerpted pages from the Deposition of David I. Toof, Ph.D. (October 30, 2014)
14	Rebuttal Expert Report of Michael Starkey, with Exhibit E (November 5, 2014) *HIGHLY CONFIDENTIAL MATERIALS OMITTED*
15	Letter from AT&T to Great Lakes (ATT0000731-33), dated July 12, 2012 *CONFIDENTIAL MATERIALS OMITTED*
16	Rebuttal Expert Report of Warren Fischer, with Amended Exhibit 4 (November 5, 2014) *HIGHLY CONFIDENTIAL MATERIALS OMITTED*
17	Excerpted pages of John W. Habiak's testimony , on behalf of AT&T Corp., in the Michigan Public Service Commission Case No. U-17619, dated September 23, 2014 (ATT0002022-25) *CONFIDENTIAL MATERIALS OMITTED*
18	Great Lakes' Quarterly Report filed with the Iowa Utilities Board (January 30, 2015)

PUBLIC VERSION

19	Great Lakes' Quarterly Report filed with the Iowa Utilities Board (October 30, 2015)
20	Great Lakes' Quarterly Report filed with the Iowa Utilities Board (April 29, 2016)
21	Exhibits 15, 16 and 18 to the Deposition of John Habiak (November 13, 2014) *CONFIDENTIAL MATERIALS OMITTED*
22	Excerpted pages from the Deposition of John Habiak (Tr. 161-171 and 181-183 included to authenticate Exhibits 15, 16 and 18) (November 13, 2014)
23	Excerpted pages from Great Lakes' F.C.C. Tariff No. 1 (September 1, 2005)
24	Spreadsheet of Great Lakes (and Northern Valley) AMOU s from January 2007 to August 2013 (ATT0000750) *CONFIDENTIAL MATERIALS OMITTED*
25	Spreadsheet summary of charged access and billed minutes for ANC and AVOICS customers (ATT0002081), attached as Deposition Exhibit 21 to the Deposition of Duane MacAnaspie (December 3, 2014) *HIGHLY CONFIDENTIAL MATERIALS OMITTED*
26	Excerpted pages from the Deposition of Duane MacAnaspie authenticating Exhibit 21 (Spreadsheet summary of charged access and billed minutes for ANC and AVOICS customers (ATT0002081)) (December 3, 2014)
27	Emails between D. Carter and M. Hunseder regarding settlement offers (August 2016) *CONFIDENTIAL MATERIALS OMITTED*
28	AT&T's Brief in Support of Referral to FCC Under Primary Jurisdiction Doctrine, (<i>Great Lakes Commc'n Corp. v. AT&T Corp.</i> , ECF No. 154, dated June 16, 2015)
29	Expert Report of Warren Fischer, with Exhibits 1-5 (August 18, 2014) *HIGHLY CONFIDENTIAL MATERIALS OMITTED*
30	District Court Order following telephonic hearing (<i>Great Lakes Commc'n Corp. v. AT&T Corp.</i> , ECF No. 74, dated December 11, 2014)
31	Excerpted pages from Newton's Telecom Dictionary (25 th Ed. 2009)
32	AT&T correspondence to Sprint counsel regarding withdrawal from IUB Docket No. SPU-2001-0004 (ATT0000710), dated September 28, 2012 *CONFIDENTIAL MATERIALS OMITTED*

EXHIBIT 1

**Rebuttal Testimony of John W. Habiak, on
behalf of AT&T Corp, in Michigan Public
Service Commission Case No. U-17619, at 4-5
(September 11, 2014)**

PUBLIC VERSION

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

Case No. U-17619

**Rebuttal Testimony of John W. Habiak
On Behalf of AT&T Corp.**

AT&T Corp. Exhibit 1.2

PUBLIC VERSION

September 11, 2014

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE COMMISSION SHOULD DISREGARD COMPLAINANTS’ ATTEMPTS TO DISTRACT THE COMMISSION FROM THEIR OWN UNLAWFUL CHARGES.....	3
A.	AT&T CORP. CANNOT BE BLAMED FOR COMPLAINANTS’ UNLAWFUL CHARGES.....	3
B.	COMPLAINANTS’ MISCHARACTERIZATION OF CRICKET AS “AT&T’S WIRELESS AFFILIATE”	9
C.	COMPLAINANTS’ “THEY DO IT TOO” ARGUMENT	13
D.	COMPLAINANT’S “NO HARM, NO FOUL” ARGUMENT	18
III.	GLC’S ATTEMPT TO EVADE THE RULES BY CREATING ITS OWN EXEMPTION FOR “COMPETITIVE ACCESS PROVIDERS.”	20
IV.	COMPLAINANTS’ OTHER ARGUMENTS LACK MERIT.....	26
V.	CONCLUSION	28

**REBUTTAL TESTIMONY OF JOHN W. HABIAK
ON BEHALF OF AT&T CORP.**

I. INTRODUCTION

**Q. ARE YOU THE SAME JACK HABIAK WHOSE DIRECT TESTIMONY ON
BEHALF OF AT&T CORP. WAS FILED IN THIS CASE ON JULY 24, 2014,
AND WHOSE RESPONSE TESTIMONY ON BEHALF OF AT&T CORP. WAS
FILED IN THIS CASE ON AUGUST 28, 2014?**

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?

**A. The purpose of this testimony is to rebut the responsive testimony submitted on August
28, 2014 by Great Lakes Comnet, Inc. (“GLC”) and its affiliate Westphalia Telephone
Company (“WTC”). I refer to GLC and WTC collectively as “Complainants.”**

**Q. DO YOU HAVE ANY OVERALL COMMENTS ON THE TESTIMONY SO FAR,
AND ON COMPLAINANTS’ RESPONSE TESTIMONY?**

**A. Yes. In my direct testimony, I showed that the Complainants’ switched access charges
are unreasonably high under federal law, and therefore unreasonably high under
Michigan law, which requires all intrastate switched access rates to mirror the
corresponding interstate rates. As I explained, the Complainants (i) apply high “rural
Michigan” rates to non-rural traffic (much of which isn’t even Michigan traffic),**

(ii) engaged in “access stimulation” by routing wireless 8YY traffic into Michigan, and

(iii) apply transport charges that reflect unreasonably high transport mileage of 83 miles.

In my response testimony, I showed that discovery has revealed even more problems with Complainants’ charges. First, Complainants billed for the entire 83 miles of transport between the Local Exchange Carriers of Michigan (“LECMI”) switch in Southfield and the GLC tandem in Westphalia at their own very high rates, even though Complainants did not provide all of the transport service. In fact, discovery revealed that LECMI, not Complainants, provided nearly half the transport mileage (from Southfield to Flint) – a fact Complainants never mentioned in their bills or in their testimony. Second, Complainants billed AT&T Corp. for local switching by LECMI, even though LECMI did not perform any local switching. Third, Complainants billed Michigan intrastate rates on traffic that originates and terminates in states other than Michigan.

Complainants’ “response” consists mostly of irrelevant attempts to change or avoid the subject. Their lead argument is to “blame the victim.” Complainants say that AT&T Corp. should have taken costly steps to avoid their network, and they argue that AT&T Corp. should be forced to pay Complainants’ unlawful charges because it didn’t take the “options” Complainants suggest after the fact. I show below that Complainants’ so-called “options” were not viable. More importantly, their arguments are an irrelevant diversion. If Complainants’ charges are unlawful (as I have shown they are), Complainants are not entitled to collect or keep those charges, so criticizing AT&T Corp. for incurring the charges is beside the point.

In addition, Complainants still fail to come to grips with the facts that discovery has revealed. In particular, Complainants' response testimony still acts as if Complainants provided the entire transport service between Southfield and Westphalia, and does nothing to account for the fact that LECMI provided 44% of that service.

Q. DO YOU HAVE ANY SUPPORTING SCHEDULES?

A. Yes, I have six supporting schedules:

Schedule JH-24 – GLC Discovery Response Showing Commissions Paid by GLC on 8YY Traffic

Schedule JH-25 – Complete Copy of Agreement Between GLC and IBDC

Schedule JH-26 – Analysis of AT&T Michigan Transport Routing

Schedule JH-27 – Excerpt from GLC Federal Tariff, FCC Tariff No. 20

Schedule JH-28 – GLC Website Page

Schedule JH-29 – GLC Discovery Response On Local Switching Charges

II. THE COMMISSION SHOULD DISREGARD COMPLAINANTS' ATTEMPTS TO DISTRACT THE COMMISSION FROM THEIR OWN UNLAWFUL CHARGES

A. **AT&T CORP. CANNOT BE BLAMED FOR COMPLAINANTS' UNLAWFUL CHARGES**

Q. GLC WITNESS SUMMERSETT CLAIMS THAT AT&T CORP. CANNOT CHALLENGE COMPLAINANTS' CHARGES BECAUSE IT HAD "OTHER OPTIONS" FOR ROUTING THE TRAFFIC AT ISSUE. (RESPONSE TESTIMONY, P. 5, LINES 4-11.) HOW DO YOU RESPOND?

74 A. Mr. Summersett's claim is both wrong and irrelevant. I show below that each of the so-
75 called "options" he proposes was not really a viable "option" at all. They are simply
76 unfounded speculations that GLC has invented after the fact. More important, however,
77 Mr. Summersett's argument is an irrelevant attempt to distract the Commission from
78 Complainants' unlawful charges. If Complainants' switched access charges are unlawful
79 – and they are – it makes no difference whether AT&T Corp. could (at great trouble and
80 expense) have avoided Complainants' network. After all, every IXC could
81 hypothetically avoid LEC access charges, by building out a redundant network to all
82 possible end users and thereby avoiding the LECs' local networks. So if the theoretical
83 possibility of "avoidance" by the IXC were relevant, LECs could charge whatever they
84 wanted for access, no IXC could ever complain, and no state or federal regulator could
85 ever do anything about the charges. Obviously, that is not the case.

86
87 **Q. YOU MENTIONED THAT MR. SUMMERSETT'S "OPTIONS" FOR AVOIDING**
88 **GLC'S TANDEM SWITCH ARE NOT ONLY IRRELEVANT BUT WRONG.**
89 **HOW DO YOU RESPOND TO HIS MAIN "OPTION," THAT AT&T CORP.**
90 **SHOULD HAVE ESTABLISHED ITS OWN DIRECT CONNECTION WITH**
91 **LECFI AND BYPASSED COMPLAINANTS' FACILITIES (PAGE 6 LINE 20 –**
92 **PAGE 7 LINE 5)¹?**

93 A. That is not a viable option at all. Establishing a connection between two networks is
94 expensive, and it requires time and the cooperation of *both* parties. LECFI has no

¹ Unless otherwise specified, all references to Mr. Summersett's testimony are to his response testimony filed August 28, 2014.

obligation to establish a “direct” connection with AT&T Corp. or any other IXC, and no obligation to route traffic over such a connection if there were one. And obviously, LECMI has no incentive to establish a “direct” connection that results in much lower access revenues to itself or cuts off its share of the Complainants’ access revenues; to the contrary, LECMI’s natural self-interest creates an affirmative incentive *against* cooperation. In fact, AT&T Corp. approached LECMI about establishing a direct connection in early 2014 (before this complaint was filed) and LECMI never even responded.

Q. WHAT ABOUT MR. SUMMERSETT’S SECOND “OPTION,” UNDER WHICH AT&T CORP. WOULD ESTABLISH AN “INDIRECT” CONNECTION WITH LECMI, BY TELLING AT&T MICHIGAN TO MAKE LECMI SET UP A CONNECTION WITH AT&T MICHIGAN FOR TRAFFIC GOING TO OR FROM AT&T CORP.? (PAGE 7 LINE 6 – PAGE 8 LINE 4)

A. This, too, was never really an option. Once again, it takes *both* parties to establish a connection between two networks. As I explained above, LECMI has no obligation to establish a special connection for AT&T Corp. traffic, and no incentive to reduce its own access revenues. Accordingly, there is little reason to believe it would be willing to arrange such a connection through AT&T Michigan. In fact, Complainants’ own witness Mr. Eaton testified that GLC was established precisely because LECs like LECMI wanted to *avoid* using AT&T Michigan’s tandems. It makes no sense for Complainants to suggest now that LECMI would have agreed to use AT&T Michigan’s tandems and to bypass the GLC tandem.

118

119 **Q. MR. SUMMERSETT CLAIMS THAT THE INTERCONNECTION**
120 **AGREEMENT BETWEEN AT&T MICHIGAN AND LECMI REQUIRES LECMI**
121 **TO SET UP A CONNECTION AT AT&T MICHIGAN’S REQUEST. IS THAT**
122 **CORRECT? (PAGE 7 LINE 6 – PAGE 8 LINE 4)**

123 A. No. Mr. Summersett is misreading the interconnection agreement. That agreement was
124 set up for the exchange of AT&T Michigan traffic and LECMI traffic, not for traffic
125 going to or coming from AT&T Corp. The provision he references is limited to
126 establishing connections for *intra*LATA toll traffic, not for *inter*LATA traffic of the kind
127 that is involved here. Section 5.2.3 plainly states that the “Access Toll Connecting
128 Trunks” it talks about “shall be two-way trunks connecting an End Office Switch that
129 Requesting Carrier utilizes to provide Telephone Exchange Service and Switched
130 Exchange Access Service *in a given LATA* to an access Tandem Switch [AT&T
131 Michigan] utilizes to provide Exchange Access *in such LATA*.” Further, Section 5.2.4
132 (which Mr. Summersett attached to his testimony but ignores) specifically says that the
133 Access Toll Connecting Trunks are to carry “*IntraLATA* toll free traffic.”

134

135 **Q. OVER AND ABOVE MR. SUMMERSETT’S MISREADING OF THE**
136 **INTERCONNECTION AGREEMENT, IS THERE ANY OTHER PROBLEM**
137 **WITH HIS “OPTION”?**

138 A. Yes. AT&T Corp. cannot ask AT&T Michigan to “arrange” a special connection with
139 LECMI for AT&T Corp. traffic, and AT&T Michigan would not be able to set up a
140 special connection for AT&T Corp.’s benefit in any event. Although I am not a lawyer, I

141 understand that AT&T Michigan cannot give special preferences to any IXC (in
142 particular its affiliate AT&T Corp.) and thus, as a matter of business policy, AT&T Corp.
143 does not ask AT&T Michigan for such improper preferences. Mr. Summersett's theory
144 that AT&T Corp. had "control over AT&T Michigan" and could have exercised that
145 "control" ignores the fact that these affiliates are separate companies subject to legal
146 restrictions.

147
148 **Q. MR. SUMMERSETT SAYS IT HIS "UNDERSTANDING THAT DIRECT**
149 **TRUNKS EXISTED BETWEEN LECMI AND AT&T, BUT WERE NOT USED**
150 **BY AT&T FOR THIS TRAFFIC" (PAGE 7 LINES 4-5). IS HE RIGHT?**

151 A. No. Mr. Summersett is confusing matters with the careless use of the term "AT&T."
152 The "direct trunks" he is talking about are *not* between LECMI and AT&T Corp., and
153 they cannot be used by AT&T Corp. for the traffic at issue here. The trunks run between
154 LECMI and AT&T *Michigan*. As I just explained, the connections between LECMI and
155 AT&T Michigan are for local traffic and intraLATA toll traffic. AT&T Corp. cannot use
156 those trunks for the interLATA traffic at issue in this case.

157
158 **Q. MR. SUMMERSETT'S NEXT SUGGESTED "OPTION" IS THAT AT&T CORP.**
159 **COULD HAVE NEGOTIATED A "LIMIT" ON THE TRAFFIC IT DELIVERED**
160 **TO OR ACCEPTED FROM LECMI. (PAGE 20, LINES 17-18). WAS THIS**
161 **REALLY AN OPTION?**

162 A. Not at all. There are multiple reasons why his idea would not work. First, this "option"
163 is not one AT&T Corp. could have taken on its own. It depends on the cooperation and

164 agreement of LECMI, a party that AT&T Corp. does not control and that has an
165 affirmative incentive *not* to cooperate (because a limit on traffic would have reduced
166 LECMI's revenues).

167
168 Second, Mr. Summersett does not explain how a "limit" on traffic would work in
169 practice, or how it could be enforced. In reality, the only way to enforce the limit would
170 be for AT&T Corp. to block incoming or outgoing traffic that exceeds the limit, and
171 obviously that is not a viable option for AT&T Corp.

172
173 Finally, a "limit" on traffic would not solve the problem of Complainants' unreasonably
174 high access rates. It would only reduce the amount of traffic subject to those charges.

175
176 **Q. FINALLY, MR. SUMMERSETT SUGGESTS THAT AT&T CORP. "CHOSE" TO**
177 **EXCHANGE TRAFFIC WITH LECMI AND "COULD HAVE DISCONTINUED**
178 **USE OF GLC'S SERVICES AT ANY TIME." (PAGE 20 LINES 8-21). IS HE**
179 **RIGHT?**

180 **A.** Absolutely not. AT&T Corp. has no choice but to exchange traffic with LECMI, and, as
181 I explained in my response testimony, AT&T Corp. has no control over or input into
182 LECMI's decisions about where to interconnect and route traffic. AT&T Corp. has a
183 duty to interconnect with all other carriers, including LECMI. It interconnected with
184 LECMI long before the dispute in this case arose. Now that AT&T Corp. is connected
185 with GLC (and through it, with LECMI) AT&T Corp. has to accept traffic bound for its
186 end users, and has to deliver calls from its end users that are destined for LECMI. I

explained at length in my opening and responsive testimony why AT&T Corp. cannot block such traffic, and Mr. Summersett is simply ignoring these basic facts of life.

B. COMPLAINANTS' MISCHARACTERIZATION OF CRICKET AS "AT&T'S WIRELESS AFFILIATE"

Q. MR. SUMMERSETT CLAIMS THAT AT&T CORP. IS RESPONSIBLE FOR COMPLAINANTS' ROUTING OF WIRELESS 8YY TRAFFIC BECAUSE "AT&T HAS CONTROL OVER HOW ITS WIRELESS AFFILIATES INITIALLY ROUTE WIRELESS-ORIGINATED 8YY TRAFFIC THAT IS AT ISSUE IN THIS CASE." (PAGE 5 LINES 12-14). IS HE RIGHT?

A. Certainly not. This is another example of a continuing mischaracterization by GLC. All of the wireless-originated 8YY traffic that is at issue in this case was originated by Cricket when it was *not* an affiliate of AT&T Corp. Cricket *became* an affiliate of AT&T Corp. in early 2014, but when it did, it immediately ceased the flow of wireless traffic to GLC. Obviously, GLC knows these things: the acquisition of Cricket by AT&T Inc. was a matter of public record, and GLC obviously knows that the flow of wireless 8YY traffic to GLC stopped once the acquisition was complete. Mr. Summersett's continued attempts to call Cricket "AT&T's wireless affiliate" – when it was clearly *not* "AT&T's wireless affiliate" at any time relevant to this case – are simply another attempt to distract the Commission from Complainants' unlawful charges.

Q. WHAT ABOUT MR. SUMMERSETT'S ASSERTION THAT CRICKET COULD HAVE SENT THE TRAFFIC "DIRECTLY TO AT&T" BUT HAD A

211 “FINANCIAL INCENTIVE TO SEND THE TRAFFIC TO INCOMM, A
212 TRAFFIC AGGREGATOR”? (PAGE 9 LINE 20 – PAGE 10 LINE 2).

213 A. This, too, is irrelevant. This case concerns *Complainants*’ charges for the wireless traffic.
214 Cricket’s decisions and intentions are beside the point for two reasons. First, Cricket was
215 not an affiliate of AT&T Corp. at any time relevant to this case. Second, the problem
216 here is that Complainants inserted themselves into the traffic flow and are trying to make
217 AT&T Corp. pay their very high rates for wireless 8YY traffic that has nothing to do with
218 rural Michigan (and for the most part, neither originates nor terminates in Michigan).
219 This is in sharp contrast to aggregators, like Intelliquent and Hypercube, that apply the
220 much lower rates of non-rural ILECs.

221
222 Q. TODAY, DOES CRICKET SEND TRAFFIC DIRECTLY TO AT&T CORP. OR
223 TO TRAFFIC AGGREGATORS?

224 A. I previously believed that Cricket stopped sending traffic to aggregators after the
225 acquisition by AT&T Inc., and my response testimony (lines 211-212) said so. However,
226 I subsequently learned that Cricket still sends wireless 8YY traffic to Incomm; it just
227 instructed Incomm that the traffic should not go through GLC. As I stated above, the
228 point is not relevant to this case, but I do want to make sure the record is correct.

229
230 Q. MR. SUMMERSETT CLAIMS “IT IS UNCLEAR” WHY INCOMM ROUTED
231 THE TRAFFIC “THE WAY IT DID,” BUT SUGGESTS THAT “IT MAY BE
232 THAT THE ROUTING WAS BASED ON THE CARRIER OR INTERMEDIATE

233 AGGREGATOR THAT WOULD PAY OR INCENT INCOMM THE MOST.”

234 (PAGE 10 LINES 5-8). WHAT DO YOU THINK ABOUT HIS SUGGESTION?

235 A. There is nothing “unclear” or mysterious about Incomm’s incentives. GLC knows full
236 well that the chain of payments and incentives in this case starts with GLC, ***BEGIN

237 CONFIDENTIAL*****

238 *****

239 *****END

240 CONFIDENTIAL*** GLC did not disclose any of these arrangements in its direct
241 testimony, and GLC is still trying to be coy about them even after they were revealed in
242 discovery. GLC’s obvious reluctance to come clean about its incentive and access
243 revenue sharing arrangements is confirmation that those agreements (which are designed
244 to stimulate traffic and did so) are one reason why GLC cannot apply excessive rates to
245 the traffic it has stimulated.

246
247 Q. HAVE YOU RECEIVED FURTHER EVIDENCE OF THE INCENTIVES GLC
248 PROVIDED TO ATTRACT THE 8YY TRAFFIC TO ITS NETWORK?

249 A. Yes. In a Second Supplemental Response dated September 8, 2014 to AT&T Corp.’s
250 discovery requests, ***BEGIN CONFIDENTIAL*****

251 *****

252 *****

253 *****

254 *****

255 *****

256 *****

257 *****

258 *****

259 *****END

260 CONFIDENTIAL***

261

262 Q. HAVE YOU RECEIVED FURTHER EVIDENCE ABOUT THE AGREEMENT
263 BETWEEN GLC AND IDBC?

264 A. Yes. In the same discovery response I mentioned above, ***BEGIN

265 CONFIDENTIAL*****

266 *****

267 *****

268 *****

269 *****

270 *****

271

272 *****

273 *****

274

275 *****

276 *****

277 *****

278 *****

279 *****

280 *****

281 *****

282 *****

283 *****

284 Q. *****

285 *****?

286 A. *****

287 *****

288 *****

289 *****

290 *****

291 *****END CONFIDENTIAL***

292 *****

293 C. COMPLAINANTS' "THEY DO IT TOO" ARGUMENT

294 Q. MR. SUMMERSETT TRIES TO DEFEND COMPLAINANTS' ROUTING OF

295 THE TRAFFIC AT ISSUE BY POINTING TO A FEW EXAMPLES OF

296 ROUTING BY AT&T MICHIGAN. (PAGE 12 LINE 10– PAGE 13 LINE 10).

297 BEFORE RESPONDING, COULD YOU BRIEFLY RECAP WHAT IS WRONG

298 WITH THE TRANSPORT ROUTING THAT COMPLAINANTS ARE USING

299 HERE?

300 A. Yes. As I explained in my direct testimony, Complainants are claiming that AT&T Corp.
301 should pay them for 83 miles of transport from Southfield all the way to Westphalia, at
302 Complainants' transport rates of \$0.000418 per minute per mile. They are doing this
303 even though there is an AT&T Michigan tandem only seven miles away from the LECMI
304 switch in Southfield, and even though LECMI's transport rates are only about \$0.000014
305 per minute per mile (and in fact, are required to be only about \$0.000014 per minute per
306 mile because by law LECMI's rates cannot exceed AT&T Michigan's rates). Further,
307 Complainants aren't even providing all of the 83 miles of transport that they want to
308 collect. As explained in my response testimony, discovery revealed that in reality
309 LECMI is providing 44% of the transport, but Complainants are trying to collect 100% of
310 the transport, and charging all of it at their own rates (rather than LECMI's own, much
311 lower rate). As a result, Complainants are charging AT&T Corp. some *30 times* the
312 lawful rate.

313
314 **Q. HOW DO YOU RESPOND TO MR. SUMMERSETT'S CONTENTION THAT**
315 **THERE IS NO REQUIREMENT THAT A LEC SEND ITS TRAFFIC TO THE**
316 **NEAREST TANDEM? (PAGE 12 LINES 3-9).**

317 A. AT&T Corp. agrees there is no such requirement, and AT&T Corp. is not suggesting
318 there should be.

319
320 **Q. THEN WHY DO YOU REFER TO THE FACT THAT THERE IS AN AT&T**
321 **MICHIGAN TANDEM ONLY SEVEN MILES AWAY FROM THE LECMI END**
322 **OFFICE?**

323 A. I want to be very clear on this. AT&T Corp. is not saying that any routing of the 8YY
324 traffic other than through the nearest tandem is automatically unreasonable. Rather, we
325 are saying that it was unreasonable for the Complainants to charge their exorbitant rates
326 for traffic that was transported over a circuitous route that was approximately 12 times as
327 long as the distance to the nearest tandem. And since the 83 miles of transport at the
328 Complainants' exorbitant rates was grossly excessive, AT&T Corp. is entitled to a
329 refund. For purposes of calculating that refund, some reasonable mileage figure must be
330 used, and we have used that seven mile distance from the LECMI switch in Southfield to
331 the AT&T Michigan tandem in West Bloomfield. And this is not an arbitrary selection of
332 locations for comparison. On the contrary, the LECMI Southfield switch subtended the
333 West Bloomfield tandem switch up until 2003, so the 7 miles used by AT&T Corp. as a
334 reasonable mileage figure is based on the actual mileage charged by LECMI in the past.
335 Again, though, we are not saying that in all cases the shortest distance is necessarily the
336 only reasonable distance.

337
338 **Q. MR. SUMMERSETT CLAIMS THAT AT&T MICHIGAN DOES NOT ALWAYS**
339 **ROUTE TRAFFIC TO THE NEAREST TANDEM. (PAGES 12-13). WHAT IS**
340 **YOUR RESPONSE?**

341 A. This argument is another irrelevant diversion. GLC is trying to distract the Commission
342 from Complainants' unlawful charges by arguing "they do it too." The issue before the
343 Commission is whether *Complainants'* charges are reasonable and lawful, and in
344 particular whether it was proper for Complainants to apply exorbitant rates (including 83
345 miles of transport) to non-rural traffic (including 8YY wireless traffic). We are not here

to examine the traffic routing decisions of AT&T Michigan (which has much lower access rates) for other kinds of traffic in other parts of the state. Further, GLC's attempt to criticize AT&T Michigan is way off base, as there is a dramatic difference between AT&T Michigan's routing and what Complainants are doing here.

Q. HOW DO THE AT&T MICHIGAN ROUTING DECISIONS THAT MR. SUMMERSETT DISCUSSES DIFFER FROM THE COMPLAINANTS' ROUTING HERE?

A. Although in a few cases AT&T Michigan routes traffic to an AT&T Michigan tandem that is further away than a tandem served by Frontier, the difference in mileage is nowhere near as large as the massive increase in mileage that Complainants have sought to impose on AT&T Corp. More importantly, AT&T Michigan's tandem switching rates are lower than Frontier's, so AT&T Michigan's "bypass" ends up *saving* money for the IXC, not gouging the IXC like Complainants are trying to do.

Q. COULD YOU GIVE US AN EXAMPLE?

A. Certainly. Mr. Summersett criticizes AT&T Michigan for routing traffic from Three Oaks to its own tandem in Grand Rapids, rather than routing that traffic to Frontier's tandem in Three Rivers. While it is true that AT&T Michigan's routing yields more mileage, the proportionate increase (from 51 miles to 94 miles – less than double) is nowhere near the increase in mileage that Complaints are trying to impose, which multiplies the mileage by a factor of nearly 12 (from 7 miles to 83 miles). More importantly, the bottom-line result is a savings to the IXC, because AT&T Michigan's

per-minute rates are lower even with the increase in transport mileage. As I show in Schedule JH-26, AT&T Michigan's rate for that traffic is only \$0.003352 per minute, even when you consider the additional miles of transport. If AT&T Michigan were to route the traffic through the Frontier tandem instead, the per-minute rate would be slightly higher – \$0.003707 – so the IXC benefits from AT&T Michigan's current routing. As Schedule JH-26 shows, this is true of every single one of the examples Mr. Summersett cites.

In sharp contrast, Complainants' routing multiplies the transport mileage by a factor of nearly 12, and then Complainants compound the problem further by applying their own rates – which are several times *higher* than the access rates of AT&T Michigan, Frontier, or LECMI – to the entire transport service. The end result is not a savings to the IXC, as is the case with AT&T Michigan's routing, but a 30-fold increase in price. So, far from showing that AT&T Michigan has joined in Complainants' gouging practices, Mr. Summersett's examples only provide further confirmation that Complainants' practices are unreasonable.

**Q. HOW DOES THIS ILLUSTRATION TIE BACK TO YOUR PREVIOUS
TESTIMONY ABOUT THE FCC'S *ALPINE* DECISION?**

A. In the *Alpine* decision, the FCC held that several LECs' charges were contrary to their tariffs and to federal law, because the LECs imposed over 100 miles of distance-sensitive charges by using a routing arrangement that "had no benefits for their end user customers

or IXCs, yet substantially increased access charges billed to IXCs.”² In my direct testimony, I showed that Complainants’ 83-mile routing arrangement provides no benefits to end users or IXCs, yet substantially inflates Complainants’ access charges to IXCs. By contrast, Complainants are trying to distract the Commission by talking about routing decisions by AT&T Michigan that do *not* increase access charges paid IXCs; to the contrary, those decisions reduce the total charge paid by IXCs.

D. COMPLAINANT’S “NO HARM, NO FOUL” ARGUMENT

Q. MR. SUMMERSETT ARGUES THAT AT&T CORP. CHARGES 99 CENTS A MINUTE FOR 8YY SERVICE, SO IT SHOULD NOT OBJECT TO OVER-PAYING FOR GLC’S SWITCHED ACCESS. (PAGES 16-17) HOW DO YOU RESPOND?

A. GLC’s argument is wrong on many levels. First, GLC’s switched access rates are unlawful because they do not comply with the FCC’s pricing rules. Whether or not AT&T Corp. (or any other IXC) can make a profit despite GLC’s unlawfully high rates has nothing to do with the question.

Second, GLC’s argument, boiled down to its essence, is that AT&T Corp.’s customers should bear the burden of GLC’s excessive rates by paying higher prices for 8YY service. That argument is anti-consumer and should get no traction with the Commission.

² *AT&T Corp. v. Alpine Commc’ns*, 27 FCC Rcd. 11513, ¶¶ 1, 29, *recon. denied*, 27 FCC Rcd. 16606 (2012).

Third, GLC only refers to a published, default “rack rate.” (See Exhibit GLC 29).

*****BEGIN CONFIDENTIAL*******

*******END**

CONFIDENTIAL*** And there is nothing unusual about having published rates that are higher than the actual rates paid by customers – it is common in the industry.

Q. MR. SUMMERSETT ALSO ARGUES THAT GLC DID NOT ARTIFICALLY STIMULATE NEW 8YY TRAFFIC, SO AT&T CORP. WAS NOT HARMED. (PAGE 19, LINES 1-16). IS THIS RIGHT?

A. The argument makes no sense. First, AT&T Corp. does not claim that it was harmed by an increase in the overall amount of 8YY traffic. Rather, AT&T Corp.’s complaint is that the out-of-state 8YY traffic in issue was re-directed from switched access providers with reasonable switched access rates (i.e., that complied with FCC pricing rules) to GLC, which applied exorbitant, non-compliant rates.

Second, the question whether there was an overall increase in 8YY traffic during 2010-2013 is irrelevant. The real issue is whether GLC was charging lawful rates on the 8YY traffic that went through its network; and it was not.

**III. GLC'S ATTEMPT TO EVADE THE RULES BY CREATING ITS OWN
EXEMPTION FOR "COMPETITIVE ACCESS PROVIDERS."**

**Q. MR. SUMMERSETT SAYS IT IS HIS "UNDERSTANDING THAT THE FCC
HAS REPEATEDLY RECOGNIZED THAT WHERE A [COMPETITIVE
ACCESS PROVIDER] DOES NOT OWN END OFFICES, IT IS NOT SUBJECT
TO THE REGULATIONS GOVERNING CLEC SWITCHED ACCESS RATES."
(PAGE 17 LINES 7-9). HOW DO YOU RESPOND?**

A. Mr. Summersett's assertion is a legal argument and AT&T Corp.'s lawyers will address it
in their briefs.

**Q. IN YOUR RESPONSE TESTIMONY, YOU DISCUSSED FCC RULE 61.26 AND
SHOWED THAT THERE WAS NO EXEMPTION FOR CAPS. RECOGNIZING
THAT YOU ARE NOT A LAWYER, IS THERE ANY BASIS FOR MR.
SUMMERSETT'S NEW "UNDERSTANDING" IN THAT RULE?**

A. Based on my understanding of industry terms and the plain language of the regulation,
Rule 61.26 defines the term "CLEC" to mean: "a local exchange carrier that provides
some or all of the interstate exchange access service used to send traffic to or from an end
user and does not fall within the definition of 'incumbent local exchange carrier' in 47
U.S.C. 251(b)." 47 C.F.R. § 61.26(a)(1) (emphasis added). A "local exchange carrier" is
"any person that is engaged in the provision of telephone exchange service *or* exchange
access." 47 U.S.C. § 153(26)(emphasis added). A self-styled "CAP" that does not own
end offices may not be "engaged in the provision of telephone exchange service," but it *is*
"engaged in the provision of exchange access," and that is enough to make it a LEC.

Likewise, a “CAP” that does not own end offices may not provide “all of the interstate exchange access service used to send traffic to or from an end user” but it still provides “some” of that service, and under the regulation, that is enough to make it a CLEC.

Further, the Rule specifically confronts the situation in which an access provider does *not* provide service to the end user, and it does not create an exemption for those providers. To the contrary, it says that the cap on that provider’s rates is even *lower* than the cap for access providers that do provide service to the end user. Paragraph (f) says: “If a CLEC provides some portion of the interstate switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services.” In other words, a CLEC that serves the end user can charge up to the competing ILEC’s *full* access charge for all rate elements, including the ILEC’s end office charges; but a CLEC like GLC that does not serve the end user can only charge *part* of the competing ILEC’s access rate (*i.e.* the rate elements that correspond to the services the CLEC actually provides).

This Rule makes perfect sense. A CLEC that provides only *part* of the access service should charge less than the CLEC that provides service all the way to the end user.

Under GLC’s theory, though, a CLEC that provides part of the access service can charge *much more* than the CLEC that provides service all the way to the end user; in fact, it can impose virtually unlimited charges with no cap at all.

479 **Q. MR. SUMMERSETT SAYS THAT THE FCC RECENTLY ORDERED THAT**
480 **CERTAIN SWITCHED ACCESS RATES BE TRANSITIONED TO BILL-AND-**
481 **KEEP AND THAT LECS CAN RECOVER THEIR SWITCHED ACCESS COSTS**
482 **FROM END USERS (PAGE 17 LINES 12-14), BUT HE DOESN'T REFERENCE**
483 **ANY RULES OR ORDERS. WHAT IS HE TALKING ABOUT?**

484 A. Mr. Summersett appears to be talking about the FCC's 2011 order reforming certain
485 interstate switched access rates for all LECs.³ That order requires certain rate elements to
486 be transitioned to "bill and keep" (in other words, reduced to zero) over several years.

488 **Q. DOES THAT ORDER HAVE ANY RELEVANCE TO THIS PROCEEDING?**

489 A. Not in the least. AT&T Corp. does not contend that GLC's rates should be transitioned
490 to bill and keep under the 2011 order. (In fact, my understanding is that rates for tandem
491 switching and transport are not being transitioned to bill and keep.) Rather, AT&T Corp.
492 maintains that GLC's rates are subject to the "caps" the FCC established for (i) CLEC
493 access rates, and (ii) rates by LECs that engage in "access stimulation." The cap on
494 CLEC access rates was established years before the 2011 order. The cap for access
495 stimulation was established in a different part of the 2011 order, and is separate from the
496 transition to bill and keep.

498 **Q. WHAT ABOUT MR. SUMMERSETT'S POLICY ARGUMENT THAT**
499 **CARRIERS LIKE GLC "DO NOT PROVIDE LOCAL EXCHANGE SERVICES**

³ *In re Connect America Fund: A National Broadband Plan For Our Future*, 27 FCC Rcd. 4040 (2011).

500 TO END USERS FROM WHICH THEY CAN RECOVER OR SUBSIDIZE THE
501 REDUCED REVENUES FROM SWITCHED ACCESS SERVICES”? (PAGE 17
502 LINES 16-18).

503 A. His policy argument is irrelevant, factually unfounded, and wrong. The pertinent FCC
504 Rule, Rule 61.26, does not exempt such carriers: in fact, as I showed above, it states that
505 the cap on their access rates is *lower* than the cap on carriers that provide service to end
506 users. GLC’s interstate switched access rates have to comply with the federal Rule and
507 (as I explained in my direct and response testimony) GLC’s intrastate switched access
508 rates have to “mirror” its federal rates. AT&T Corp.’s lawyers will of course respond to
509 any legal arguments the Complainants’ lawyers might raise. But in any event this
510 Commission cannot ignore or rewrite the law based on Mr. Summersett’s policy
511 arguments.

512
513 Factually, Mr. Summersett is apparently trying to create the impression that GLC cannot
514 recover its costs at the rates required by federal law, and that it has to charge 30 times the
515 lawful rate to recover its cost. If that is his position, he has not provided any financial
516 data to support it and his policy argument has no foundation.

517
518 Finally, Mr. Summersett’s policy argument is wrong in any event. Historically, LECs set
519 high access rates to subsidize the cost of serving end users, particularly the cost of local
520 “loops” connecting end users to end offices. The FCC has decided that such subsidies are
521 harmful and unsustainable, so end users must bear more of the cost the carrier incurs to
522 serve them. If a carrier does not own end offices and does not serve end users, then there

523 was no policy reason to support high access rates for that carrier in the first place. That
524 carrier does not incur any cost to serve end users, so it never needed access charges to
525 subsidize that cost and has no need to shift end-user costs back to end users. Further, it
526 makes no sense to give carriers an exemption when they do *not* serve end users: that
527 would just encourage CLECs to stop serving end users so they can engage in pure
528 arbitrage and impose unlimited access charges.

529
530 **Q. HOW DO YOU RESPOND TO MR. SUMMERSETT'S CONTENTION (AT**
531 **PAGE 11) THAT THE COMPLAINANTS DID NOT ENGAGE IN ARBITRAGE?**

532 A. As I said in my direct testimony, the Complainants engaged in arbitrage because they
533 implemented an arrangement that was designed to increase their access revenues at the
534 expense of AT&T Corp. and other IXC's while not serving any legitimate business or
535 economic purpose. For purposes of illustration, I gave a classic example of arbitrage. I
536 did not suggest that GLC and WTC were engaging in the particular form of arbitrage that
537 I used for illustration. In his response, Mr. Summersett says that GLC and WTC did not
538 engage in that form of arbitrage. That is correct. But GLC and WTC engaged in a
539 different form of arbitrage, by circumventing the FCC's caps on CLEC access rates and
540 by engaging in access stimulation.

541
542 **Q. LET'S GET BACK TO THE CAP ON CLEC ACCESS RATES. OUTSIDE OF**
543 **THIS PROCEEDING, DOES GLC CLAIM THAT IT IS NOT A CLEC OR THAT**
544 **IT IS EXEMPT FROM RULE 61.26?**

A. No, just the opposite. GLC's federal tariff (Tariff FCC No. 20) plainly states that "[t]he Company" – GLC – "is a rural CLEC under Section 61.26(a)(6) of the Federal Communications Commissions (FCC's) Rules, 47 C.F.R. § 61.26(a)(6)." I have attached excerpts from the tariff as Schedule JH-27. As the tariff shows, GLC's admission is the basis for GLC's use of the rates in the NECA tariffs. Thus, in the federal forum GLC admits that it is a CLEC under Rule 61.26.

Q. WHAT ABOUT GLC'S CLAIM THAT IT IS A "RURAL" CLEC?

A. AT&T Corp.'s lawyers will address any legal arguments GLC might raise, but as a factual matter GLC is certainly not "rural." I have attached as Schedule JH-28 a page from GLC's website, http://www.glcom.net/network/glc_network_map.pdf, which clearly shows that GLC's extensive fiber network, includes fiber rings in several "metro" areas: Chicago, Detroit, Lansing, Grand Rapids, and Ann Arbor. Thus, a substantial portion of GLC's service territories fall within urban, not rural, areas.

Further, the crux of this dispute is that GLC is trying to impose "rural" NECA rates on traffic that is clearly not "rural." Traffic to and from LECMI, a CLEC that operates in the Detroit metropolitan area and has a switch in Southfield, is certainly not "rural." 8YY traffic originated by wireless end users across the country, and destined for businesses with 8YY numbers, is certainly not "rural" either.

IV. COMPLAINANTS' OTHER ARGUMENTS LACK MERIT

Q. MR. SUMMERSETT CLAIMS THAT GLC'S RATES ARE NECESSARILY JUST AND REASONABLE, BECAUSE THEY ARE "EQUAL TO THOSE RATES SET FORTH IN THE NATIONAL EXCHANGE CARRIERS ASSOCIATION ('NECA') TARIFF No. 5," AND ARE SUBJECT TO FCC APPROVAL AND USED BY "HUNDREDS OF CARRIERS NATIONWIDE." (PAGE 16 LINES 12-18). HOW DO YOU RESPOND?

A. Mr. Summersett is wrong about this, for a very simple reason: GLC is not a member of NECA. Carriers that are members of NECA concur in, and are identified in, the NECA tariff. GLC, in contrast, has its own tariff. In that tariff, GLC has adopted the NECA rates, but as a non-NECA member, GLC does not concur in the NECA tariff. The rates in the NECA tariff are approved by the FCC *for use by NECA carriers*, but not for use by any and every carrier that adopts the NECA rates. And the NECA rates, however just and reasonable they may presumptively be for NECA members, are not presumptively just or reasonable for GLC.

Q IS THERE AN ADDITIONAL REASON THAT THE NECA RATES ARE NOT PRESUMPTIVELY JUST OR REASONABLE FOR GLC?

A. Yes. The NECA tariff includes terms and conditions to which NECA carriers are bound. By approving the NECA tariff, the FCC is saying, in effect, that the rates are just and reasonable so long as they are associated with those terms and conditions. As I stated, GLC does not concur in the NECA tariff. As a result, it is not bound by the terms and

conditions in that tariff. And at least one of the terms in the NECA tariff is one that I'm certain GLC wouldn't be willing to live with.

Q. WHAT TERM IS THAT?

A. The prohibition against transporting traffic over LATA boundaries. Recall that WTC, which is a NECA carrier, is subject to this prohibition, and that is one reason that the Southfield-to-Westphalia transport that was attributed to WTC on the bills WTC sent us was unlawful. GLC of course routinely transports traffic over LATA boundaries, and so would be unwilling to subscribe to the NECA tariff.

Q. IS THERE ANOTHER REASON THAT THE COMMISSION SHOULD REJECT GLC'S CLAIM THAT IT IS ENTITLED TO CHARGE THE NECA RATES?

A. Yes. I do not know the details of how the NECA rates are calculated, but I do know at a high level that the rates take into account the differing costs of all the NECA carriers. Also, when an individual NECA carrier charges the NECA rates and is paid accordingly, that carrier does not retain the revenues itself. Rather, the NECA carriers' access revenues are pooled, and are then re-allocated among them. Since GLC is not a member of NECA, it does not participate in this process at either end. That is, its costs are not taken into account when the NECA rates are established, and it is not part of the pooling and revenue allocation in which NECA carriers participate. This is yet another reason that rates that the FCC has determined are just and reasonable for NECA carriers are not just and reasonable for GLC

610

611 **Q. DO YOU HAVE ADDITIONAL INFORMATION ON AT&T CORP.'S CLAIM**
612 **FOR REFUNDS OF THE LOCAL SWITCHING CHARGES?**

613 A. Yes. I address this issue in my response testimony at pages 32-36. In a nutshell, I
614 demonstrated that Complainants collected \$815,372 from AT&T Corp. for local
615 switching services that were never provided, so that AT&T Corp. is entitled to a full
616 refund. The new information is the Complainant's supplemental response to AT&T DR
617 009, which I attach as Schedule JH-29. There, Complainants explain that all IXC's were
618 billed for LECMI local switching and that all IXC's (other than AT&T Corp.) received
619 full credits for those charges in May and June, 2013. Also, WTC advised LECMI in
620 June, 2013 that AT&T Corp. was entitled to a full credit for the local switching charges,
621 so Complainants have known for well over a year that AT&T Corp. was and is entitled to
622 a refund of the local switching charges. In light of this admission, the Commission
623 should order Complainants to make those refunds.

624

625 **V. CONCLUSION**

626 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

627 A. Yes.

PROOF OF SERVICE

Aletha J. Blackmon
Notary Public, Cook County, Illinois
My Commission Expires: April 23, 2018
Acting in the County of Cook, Illinois

SERVICE LIST
MPSC Case No. U-17619

Administrative Law Judge Suzanne Sonneborn
Michigan Public Service Commission
6545 Mercantile Way, Suite 14
P.O. Box 30221
Lansing, MI 48909
sonneborns@michigan.gov

Bryan A. Brandenburg
Michigan Public Service Commission
6545 Mercantile Way, Suite 15
Lansing, MI 48911
brandenburgb@michigan.gov

Michael A. Holmes (P24071)
Michael G. Oliva (P29038)
Leah Brooks (P72811)
Loomis Ewert Parsley Davis & Gotting PC
124 West Allegan, Suite 700
Lansing, MI 48933
holmes.michael@telecommich.org
mgoliva@loomislaw.com
ljbrooks@loomislaw.com

Philip J. Macres
Klein Law Group, PLLC
1250 Connecticut Avenue, N.W., Ste. 200
Washington, D.C. 20036
pmacres@kleinlawpllc.com

Robin Ancona
Michigan Public Service Commission
7150 Harris Dr.
Lansing, MI 48909
anconar1@michigan.gov

Anne Uitvlugt
Michigan Public Service Commission
6545 Mercantile Way, Suite 15
Lansing, MI 48911
uitvlugta@michigan.gov

EXHIBIT 2

**Great Lakes' Settlement Offer of
May 8, 2014**

**CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 3

**Great Lakes' Settlement Offer of
May 23, 2014**

**CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 4

**Great Lakes' Settlement Offer of
June 30, 2014**

**CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 5

**Great Lakes' Settlement Offer of
August 2, 2014**

**CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 6

**Great Lakes' Settlement Offer of
June 19, 2015**

**CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 7

**Great Lakes' Settlement Offer of
February 16, 2016**

**CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 8

**Great Lakes' Settlement Offer of
August 3, 2016**

**CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 9

**AT&T's Settlement Offer of June 26, 2015,
including email exchange between
M. Hunseder and D. Carter following offer**

**CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 10

**Expert Report of Michael Starkey, with
Exhibits A-D (August 18, 2014)**

**HIGHLY CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 11

In re Great Lakes Comm'cn Corp.,
Order Terminating Reporting Requirements,
IUB Docket No. M-3798 (IUB, July 15, 2016)

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:	
GREAT LAKES COMMUNICATION CORP., d/b/a IGL TELECONNECT	DOCKET NO. M-3798

ORDER TERMINATING REPORTING REQUIREMENTS

(Issued July 15, 2016)

The Utilities Board (Board) issued its “Final Order” in Docket No. SPU-2011-0004 on March 30, 2012, and at that time required Great Lakes Communication Corp., d/b/a IGL TeleConnect (Great Lakes), to provide the Board with monthly status reports detailing Great Lakes’ progress in the development and implementation of a plan to provide local exchange telecommunications service in the Lake Park and Milford, Iowa, exchanges. That reporting requirement was subsequently modified by the Board in an order issued on October 8, 2014, which, among other things, closed Docket No. SPU-2011-0004 and changed Great Lakes’ monthly reporting obligation to quarterly under this docket designation.

On June 14, 2016, Great Lakes filed with the Board a motion to terminate Great Lakes’ quarterly reporting requirements. Great Lakes states that since the Board’s October 8, 2014, order, Great Lakes has continued to meet its reporting requirements. The quarterly reports have detailed how Great Lakes has continued to provide local exchange and broadband Internet services to residents and businesses

DOCKET NO. M-3798
PAGE 2

in northwest Iowa as well as how Great Lakes has made significant investment in its plant and personnel in order to provide a quality customer service experience. Great Lakes also states that it is committed to continuing to compete for local exchange and Internet customers.

On June 16, 2016, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed a response to Great Lakes' motion to terminate its reporting requirement. OCA states that it does not object to Great Lakes' motion since Great Lakes asserts that it continues to be committed to competing for local exchange customers in Iowa and any progress made in that regard can be reviewed in Great Lakes' annual report filing pursuant to 199 IAC chapter 23.

The Board has reviewed Great Lakes' motion and OCA's response and agrees that Great Lakes' reporting requirements can be terminated at this time. Great Lakes' continued progress in expanding its local exchange service offerings can be sufficiently reviewed in Great Lakes' annual report filings with the Board. Therefore, the Board will grant Great Lakes' motion and terminate the reporting requirement established by the Board's order issued March 30, 2012, and modified on October 8, 2014, in Docket No. SPU-2011-0004.

DOCKET NO. M-3798
PAGE 3

IT IS THEREFORE ORDERED:

The motion to terminate reporting requirements filed by Great Lakes Communications Corp., d/b/a IGL Teleconnect, on June 14, 2016, is granted as described in this order.

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Elizabeth S. Jacobs

ATTEST:

/s/ Trisha M. Quijano
Executive Secretary, Designee

/s/ Nick Wagner

Dated at Des Moines, Iowa, this 15th day of July 2016.

EXHIBIT 12

**Excerpted pages from the
Deposition of Josh Nelson
(November 6, 2014)**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

GREAT LAKES COMMUNICATIONS

No. 5:13-cv-4117

CORP.,

Plaintiff,

v.

AT&T CORP.,

Defendant.

*** ATTORNEYS' EYES ONLY ***

DEPOSITION of JOSHUA D. NELSON, taken on
behalf of the Defendant, reported by Robin R.
Qualy, CSR, starting at 8:36 a.m., on November 6,
2014, at the Arrowwood Resort & Conference Center,
1405 U.S. 71, Okoboji, Iowa.

APPEARANCES

Joseph P. Bowser

G. David Carter

Innovista Law PLLC

1200 18th Street NW, Suite 700

Washington, DC 20036

On behalf of the Plaintiff.

Brian A. McAleenan

Sidley Austin LLP

One South Dearborn

Chicago, IL 60603

On behalf of the Defendant.

1 * * *

2 JOSHUA D. NELSON

3 sworn by the reporter, testified as follows:

4 EXAMINATION

5 BY MR. McALEENAN:

6 Q. Mr. Nelson, could you please state your
7 full name for the record.

8 A. Joshua Dean Nelson.

9 Q. And, Mr. Nelson, by whom are you
10 employed?

11 A. Great Lakes Communication.

12 Q. Okay. And what's your current position
13 there?

14 A. I'm CEO.

15 Q. And we're going to look back at Exhibit
16 9, which was previously marked as Exhibit 9.

17 Mr. Nelson, do you recognize this as the
18 Notice of Deposition that AT&T served upon Great
19 Lakes in this case?

20 A. Yep.

21 Q. And if you turn back to Page 4, do you
22 see there's a list of topics there?

23 A. Yep.

24 Q. And, Mr. Nelson, you understand that you
25 are designated as the corporate representative for

1 Topics 4 through 11 in their entirety?

2 A. Yep.

3 Q. Okay. And then also Exhibit 1 as it
4 pertains to the contracts that you've
5 negotiated -- or put it this way, all the
6 contracts other than the ones that Ms. Beneke
7 signed?

8 A. Yep.

9 Q. Okay. And then for Number 3, that
10 you're the designated person for payments
11 received -- or that are made by Great Lakes to
12 what we're calling Free Calling Parties?

13 MR. BOWSER: Objection. Vague.
14 Payments to, right?

15 MR. McALEENAN: Payments to, I meant to
16 say, yeah, Great Lakes' payments to.

17 MR. BOWSER: You said "received or."

18 MR. McALEENAN: Oh. I'm sorry.

19 BY MR. McALEENAN:

20 Q. Payments to the Free Calling Parties.

21 A. Correct.

22 Q. Okay. And before -- When I use the
23 term, "Free Calling Party," I'm talking about the
24 entities with which Great Lakes has a marketing
25 agreement for the sharing of access revenues.

1 Q. Maybe? You don't know for sure?

2 A. I don't -- This isn't today's Tariff,
3 so ...

4 Q. Have the rate elements changed?

5 A. Yes.

6 Q. They did? Okay. Which ones are -- Do
7 you recall which ones, which elements have -- Let
8 me strike that.

9 When I say the rate elements have
10 changed, I'm not talking about the price. I'm
11 talking about, you know, whether there are new or
12 different elements that are being billed today.
13 So you're saying there are new -- or different
14 billing rate elements?

15 A. No, I was talking about the rate.

16 Q. Okay. So, yeah, leaving the rate aside,
17 just talking about the individual categories of
18 elements, those are the same today, correct?

19 A. I believe so.

20 Q. Okay. And I'm saying that you're not
21 aware whether all of those are being billed to
22 AT&T?

23 A. That's correct.

24 Q. Okay. Mr. Nelson, you're aware that
25 Great Lakes has an Access Tariff on file for

1 Intrastate Access Service?

2 MR. BOWSER: Objection. Vague.

3 A. I don't know if it's actually on file,
4 but, yeah, we've had one.

5 Q. You have a Tariff for Intrastate Access?

6 A. I believe so.

7 Q. Okay. And are you aware of the rate
8 that is being charged under that Tariff for
9 Intrastate Access Service?

10 MR. BOWSER: Objection. Lacks
11 foundation.

12 A. I know the rate in the Tariff.

13 Q. In the Tariff, right.

14 A. Yes.

15 Q. What is that rate?

16 A. .0007.

17 Q. So that's seven-hundredths of a penny,
18 is that right?

19 A. .0007.

20 Q. Okay. Do you know how Great Lakes came
21 to have that rate in its Tariff?

22 A. Yes.

23 Q. How is that?

24 A. We formed that rate because we were in
25 litigation with three IXCs, and the way the

1 Utility Board does their intrastate, you have to
2 get everybody's approval or go through a lengthy
3 court process to do it.

4 Less than one percent of our traffic is
5 intrastate, so it's an analysis if it's worth the
6 legal battle to do it or not.

7 Q. Okay. And so did Great Lakes propose
8 the .0007 rate in order to sort of end the debate
9 and get the legal dispute behind it?

10 A. Yes.

11 Q. Okay. And the long distance carriers
12 accepted that?

13 A. No.

14 Q. No? So how did you end up with the rate
15 if you said it has to get --

16 A. It hasn't been adopted.

17 Q. I see. What is Great Lakes currently
18 charging for Intrastate Access?

19 A. We're not allowed to charge currently.

20 Q. You're not allowed. Okay. I believe
21 you said that it's less than one percent of your
22 traffic is intrastate?

23 A. I believe so. Intrastate, right?

24 Q. Intrastate, yes.

25 (At this time, an off-the-record

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]aying, in

1 CERTIFICATE

2 STATE OF IOWA

3 COUNTY OF CALHOUN

4 I, Robin R. Qualy, a Certified Shorthand
5 Reporter and Notary Public in and for the State of
6 Iowa, do hereby certify that the deponent was duly
7 sworn by me, and that the transcript as above set
8 forth is a true and accurate record of the
9 testimony given.

10 That the within and foregoing deposition
11 was taken by me at the time and place herein
12 specified.

13 That the witness did not ask to read and
14 sign the deposition.

15 That I am not counsel, attorney, or
16 relative of either party or otherwise interested
17 in the event of this suit.

18 IN TESTIMONY WHEREOF, I have hereunto
19 placed my hand November 8, 2014.

20

21

22

23 _____
ROBIN R. QUALY, CSR

24 Commission 144913 Exp. 10/1/17

25

NAME OF CASE: Great Lakes Communication Corp. v. AT&T Corp., 5:13-cv-4117

DATE: November 6, 2014

WITNESS: Joshua D. Nelson

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Pg.	Ln.	Now Reads	Should Read	Reason
9	16	Correct.	Correct, a trust I established does.	1
9	20	Jerry Nelson.	A trust established by Jerry Nelson.	1
14	8	Huh-uh.	No.	1
112	7	paying anybody	being paid by anybody	3



[Signature]
Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

THIS 2nd DAY OF December, 2014

Kelli J. Larsen

(Notary Public) MY COMMISSION EXPIRES: January 6, 2017

EXHIBIT 13

**Excerpted pages from the
Deposition of David I. Toof, Ph.D.
(October 30, 2014)**

UNITED STATES DISTRICT COURT

WESTERN DIVISION

GREAT LAKES COMMUNICATION
CORP.,

Plaintiff,

v.

AT&T CORP.,

Defendant.

*
*
*
*
*
*
*
*
*
*

Case No.

5:13-cv-4117

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

PURSUANT TO PROTECTIVE ORDER

ORAL AND VIDEOTAPED DEPOSITION OF

DAVID ISRAEL TOOF, PH.D.

October 30, 2014

9:45 a.m.

Reported By:
Cindy L. Sebo
Job NO: 36431

A P P E A R A N C E S:

On Behalf of Plaintiff:

INNOVISTA LAW, PLLC

1200 18th Street, Northwest

Suite 700

Washington, D.C. 20036

202.750.3502

BY: G. DAVID CARTER, ESQ.

david.carter@innovistalaw.com

JOSEPH P. BOWSER, ESQ.

joseph.bowser@innovistalaw.com

On Behalf of Defendant AT&T Corp. and the

Witness:

SIDLEY AUSTIN, LLP

1501 K Street, Northwest

Washington, D.C. 20005

202.736.8236

BY: MICHAEL J. HUNSEDER, ESQ.

mhunseder@sidley.com

ALSO PRESENT:

STEVE SCHAAL, Videographer

MICHAEL STARKEY, QSI Consulting, Inc.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

P R O C E E D I N G S

Washington, D.C.

October 30, 2014; 9:45 a.m.

THE VIDEOGRAPHER: Here begins
Videotape Number 1 of the videotape deposition
of David Toof, Ph.D., in the matter of
Great Lakes Communication versus AT&T.
Case Number is 5:13-cv-4117.

The deposition -- the court is
the United States District Court for the
Northern District of Iowa. It's being held at
1301 K Street, Northwest, Washington, D.C. on
October 30th, 2014. The time on the monitor is
approximately 9:45.

My name is Steve Schaal. I'm
from David Feldman Worldwide, and I'm the
videographer. The court reporter is
Cindy Sebo, in association with David Feldman
Worldwide.

Would counsel please introduce
yourself and state whom you represent?

MR. CARTER: Hi, good morning.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

David Carter, I'm representing Great Lakes Communication Incorporation, the Plaintiff in this matter. I'm also joined by my colleague, Joseph Bowser, of -- and we're both with the law firm Innovista Law.

We're also joined by Mike Starkey, expert witness for Great Lakes, who is from QSI Consulting.

THE VIDEOGRAPHER: Will the court -- oh --

MR. HUNSEDER: I'm Michael Hunseder from Sidley Austin representing AT&T and the witness.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness?

- - -

DAVID ISRAEL TOOF, PH.D.,
after having been first duly sworn, was
examined and testified as follows:

- - -

THE VIDEOGRAPHER: Counsel may proceed.

MR. CARTER: Thank you.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 - - -

3 EXAMINATION BY COUNSEL FOR PLAINTIFF

4 - - -

5 BY MR. CARTER:

6 Q. Good morning, Dr. Toof. It's a
7 pleasure to have you here today.

8 A. Good morning, sir.

9 Q. If you would, just for the record,
10 if you could state your name and your business
11 address, please.

12 A. Yes. My name is David I. Toof,
13 T-O-O-F. My address is 1840 Mount Ephraim
14 Road, Adamstown, Maryland. The ZIP code there
15 is 21710.

16 Q. Great. Thank you.

17 Have you been deposed
18 previously, Mr. -- Dr. Toof?

19 A. I have.

20 Q. Okay. And on multiple occasions?

21 A. Yes.

22 Q. Okay. So you're probably familiar
23 with the general rules of the deposition, but
24 let me just share a few highlights with you so
25 that we can try our best to support our court

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

reporter today.

Most importantly, we want to make sure that we don't talk over each other. So if I'm asking a question, let me finish the question before you start to respond. I will do my very best to let you answer fully before I ask any follow-up questions that I may have.

It's also important that -- even though we are on video today, that you answer questions verbally; so a yes or no, rather than a nod or a shake of the head, so that the court reporter can have an accurate record.

Okay?

A. Yes.

Q. Thank you.

Is there any reason that you would not be able to testify truthfully and completely today?

A. No.

Q. Okay. You're on no medications that would impact your ability to testify?

A. I am not.

Q. Okay. And you understand that you

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 are under oath so that it is as if you are
3 testifying in a court today?

4 A. I understand that.

5 Q. Okay. Great. Thank you so much.

6 Can you tell me when you were
7 first approached by AT&T to serve as an expert
8 witness in this matter?

9 A. Sometime in late August/early
10 September --

11 Q. Okay.

12 A. -- and I believe it was after the
13 expert reports of Mr. Fischer and Mr. Starkey
14 had been filed. So that would be my anchor
15 point in terms of time.

16 Q. Okay. So the point in time that
17 you were approached, you understood that those
18 expert reports had already been prepared; is
19 that correct?

20 A. Either they had already been
21 prepared or they -- AT&T was expecting them --

22 Q. Okay.

23 A. -- but it was right around that
24 time.

25 Q. And is it the case that you were

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 A. Okay.

3 Q. -- add follow-up questions, but I
4 wanted to -- to start with the full category
5 and make sure we understood anything that you
6 might have had.

7 Do -- do you recall reviewing
8 any data about AT&T revenues associated with
9 wholesale traffic delivered to Great Lakes?

10 A. I did not.

11 Q. Okay. Do you recall reviewing any
12 financial data provided by AT&T with regard to
13 retail customer traffic, and not necessarily
14 specific to Great Lakes, but in general?

15 A. That was produced in discovery for
16 this proceeding?

17 Q. That's correct.

18 A. No, I have not.

19 Q. Okay. Did you review any of the
20 invoices from Great Lakes to AT&T that are at
21 issue in this case?

22 MR. HUNSEDER: Object to the form.

23 THE WITNESS: Yes.

24 BY MR. CARTER:

25 Q. Okay. And can you describe for me

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 the invoices that you reviewed?

3 A. I believe that either Mr. Fischer
4 or Mr. Starkey, as support for their analysis,
5 included the CABS -- the monthly CABS reports.

6 CABS stands for --

7 Q. Carrier Access --

8 A. -- Carrier Access Billing System

9 --

10 Q. Okay.

11 A. -- I believe.

12 And I reviewed those CABS
13 reports on a random basis and tied them back to
14 the analysis that was performed, I believe,
15 by Mr. Fischer.

16 Q. Okay. So you reviewed the
17 actual CABS invoices sent from Great Lakes to
18 AT&T?

19 MR. HUNSEDER: Object to the form.

20 THE WITNESS: I reviewed the
21 documents that Mr. Fischer and Mr. Starkey
22 provided to support their analysis. It's my
23 understanding those are the actual invoices.
24 And I checked that those CABS reports tied back
25 to the -- the analysis that Mr. Fischer had in

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 his testimony.

3 BY MR. CARTER:

4 Q. Okay. On your Toof Exhibit 10 --
5 or the -- to your report, you have that you
6 reviewed Great Lakes Exhibit A to AT&T
7 Interrogatories.

8 I just wanted to clarify
9 whether you only reviewed Exhibit A to those
10 interrogatory responses or whether you reviewed
11 the full responses that Great Lakes provided.

12 A. I looked at Great Lakes
13 interrogatory responses, but I relied upon the
14 response to Interrogatory A.

15 Q. Okay. The attachment to the
16 interrogatories?

17 A. It's a spreadsheet that -- that
18 showed on a monthly basis AT&T
19 interstate minutes by free calling party.

20 Q. Okay. Did you review any
21 interrogatory responses provided by AT&T in
22 this case?

23 A. Not to the best of my
24 recollection.

25 Q. Okay. Looking at Toof Exhibit 2,

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 your report there, I'll ask you to turn, if you
3 would, to Page 47.

4 A. Yes.

5 Q. Okay. And this section of your
6 report is titled, Relief Sought By AT&T.

7 Can you describe for me your
8 understanding of AT&T's first counterclaim
9 against Great Lakes?

10 A. Yes. AT&T seeks a refund of the
11 amount that it paid in March of 2012 pursuant
12 to Great Lakes' F.C.C. -- Tariff F.C.C. 2. I
13 believe it was approximately \$106,000. And
14 this would be a refund of that amount, plus
15 accrued interest.

16 Q. What did you review to conclude
17 that AT&T had paid that amount to Great Lakes?

18 A. Great Lakes' expert Fischer's -- I
19 believe it's Attachment -- or Exhibit B or 2 --

20

21 Q. Okay.

22 A. -- shows that exact amount and
23 describes it as a payment from AT&T to
24 Great Lakes in March of 2012 --

25 Q. Okay.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 A. -- AT&T confirmed -- or -- that --
3 that they had -- that that's how they viewed
4 that same payment, as a tariff payment.

5 Q. Okay. And when you say AT&T
6 confirmed that, can you be specific about who
7 confirmed that for you?

8 A. I believe I originally asked
9 counsel, and counsel said, Yes, that's AT&T
10 position as outlined, I believe, in the request
11 for summary judgment. That number comes up a
12 lot.

13 AT&T is asserting that -- that
14 they had made an inadvertent payment and they
15 were entitled to a refund of it. And it tied
16 exactly to Mr. Fischer's number, and so I felt
17 comfortable using it.

18 Q. Okay. Did you talk to anyone
19 directly at AT&T about that issue?

20 A. I saw no need to do that.

21 Q. Okay.

22 A. I didn't think it was a number we
23 were disputing.

24 Q. Okay. Can you tell me where the
25 interest rate that you applied in DIT-6 came

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 from or is -- is derived from?

3 A. Oh, I'm sorry. I'm on DIT-8.

4 Yes. The 1.5 percent per month
5 is the late payment fee that's embedded in
6 Great Lakes' Tariff, I think both F.C.C. 1 and
7 2 -- F.C.C. 2 is the one that's key here -- and
8 it's the same rate that Mr. Fischer used in
9 calculating the interest due under
10 Great Lakes' Tariff claim.

11 Q. Okay. And is it your recollection
12 that that interest rate applies to -- or is it
13 your testimony that that interest rate applies
14 to AT&T's damage calculation because the rate
15 is in Great Lakes' Tariff?

16 A. No. It's my understanding that
17 there should be consistency within a tariff
18 claim of this nature, that -- that the interest
19 rate charged on a late payment should be
20 consistent with the interest rate that'd be
21 received for an overpayment.

22 Q. Okay. Where do you derive that
23 understanding from?

24 A. Just my understanding as a general
25 matter working regulatory entities and --

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Q. Okay.

3 A. -- telephone companies, that there
4 has to be a -- that there -- to be just and
5 reasonable, there has to be a consistency
6 between the two.

7 Q. Okay.

8 MR. HUNSEDER: I'm happy to
9 provide you the case cites if you'd like.

10 MR. CARTER: Thank you, Counsel.
11 I don't -- I would like to have the -- the
12 deponent testify.

13 MR. HUNSEDER: I'm just trying to
14 move it along.

15 BY MR. CARTER:

16 Q. Okay --

17 MR. HUNSEDER: It doesn't seem
18 like there should be a dispute, but go ahead.

19 BY MR. CARTER:

20 Q. Can you tell me what you did to
21 apply the interest rate to AT -- to this
22 Count I damage calculation?

23 A. I would -- in -- in general, I
24 would take the monthly interest rate; take a
25 look at the number of months -- I think that it

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

goes from April, the month following the payment, of 2012 to December of 2014 -- see how many months there were; take the half a percent per month, add it to the number, 1; raise it to the however-months-that-were power -- that would be the compounded number -- and apply that to the outstanding invoice; subtract the outstanding invoice from that. That would give you the interest component and the base component.

Q. Okay. So relatively straightforward mathematical calculation, then, in Exhibit DIT-6?

A. It should be --

Q. Okay.

A. -- that was its intention.

Q. Okay. Talking about Counterclaim II --

A. I'm sorry. We're on Page 47 still?

Q. Forty-seven of your report, that's right.

A. Yes.

Q. -- Counterclaim II, could you

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 describe for me your understanding of AT&T's
3 second counterclaim against Great Lakes?

4 A. Yes. It's my understanding that
5 AT&T is asserting that the tariff rates in
6 F.C.C. 2 are not just and reasonable, and that
7 a just-and-reasonable rate would not exceed
8 \$.0007 per minute of use --

9 Q. Okay.

10 A. -- and the calculation, then, is
11 based upon the minutes of use, as shown in
12 Mr. Fischer's exhibits, multiplied by that --
13 that figure.

14 Q. Okay. What's your understanding
15 of the status of Counterclaim II at this point
16 in time, if you have one?

17 MR. HUNSEDER: Object to the form.

18 THE WITNESS: It -- it's my
19 understanding that the Magistrate in this case
20 has recommended that Counterclaim II be
21 referred to the Federal Communications
22 Commission, the F.C.C., and that is pending.
23 That -- there's been no decision made on that.

24 BY MR. CARTER:

25 Q. Okay. What's the purpose of

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 including a discussion in your report about
3 Counterclaim II if it's going to -- if it's
4 potentially going to be referred to the F.C.C.?

5 A. It's not been referred to the
6 F.C.C. yet; it's still pending before the
7 Court.

8 Q. Okay. So that's -- that's your
9 purpose as -- in case that claim is not
10 referred?

11 A. Well --

12 MR. HUNSEDER: Object to the
13 form --

14 THE WITNESS: -- it's -- it --
15 it --

16 MR. HUNSEDER: -- asked and
17 answered.

18 THE WITNESS: -- it may also be
19 sent to the F.C.C., and it would be, you know,
20 the -- the status of that.

21 But I was asked to calculate
22 that number. As of today, it's a claim that
23 AT&T has before this Tribunal.

24 BY MR. CARTER:

25 Q. Okay. You -- I understood you to

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 testify that it's AT&T's position that the
3 maximum rate that would be reasonable for the
4 Great Lakes traffic is the .0007 rate; is that
5 correct?

6 A. Yes.

7 Q. And did you reach any independent
8 conclusion as to what the maximum reasonable
9 rate would be?

10 MR. HUNSEDER: Object to the form.

11 THE WITNESS: Yes. That's my
12 opinion, that that's the maximum it could be.

13 BY MR. CARTER:

14 Q. How did you reach that opinion?

15 A. The \$0.0007 is the rate that
16 Great Lakes is currently charging for switched
17 access on intrastate traffic that -- that's
18 filed with -- with the Iowa Utility Board, the
19 IUB. So that would be my starting point.

20 There's significantly more
21 traffic -- I -- and I have not seen how
22 Great Lakes developed that number. If it's a
23 cost-base number -- I understand that that's --
24 that's pending in -- in discovery, the basis
25 for that number.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 But if it is a cost-base
3 number, then it would be my experience that
4 given more volumes, the interstate volumes,
5 that that rate could only go lower.

6 Q. Okay. Is it -- what would your
7 opinion be if that's not a cost-base number?

8 A. I'd have to see what the basis of
9 the number is.

10 Q. Okay. And it's your understanding
11 that this is -- that .0007 is a rate that
12 Great Lakes is currently charging for its
13 intrastate service?

14 A. I know that that is the rate
15 that the -- the last document I saw -- and I
16 have a document that's attached to my
17 testimony -- that that was the intrastate rate,
18 that's my understanding that Great Lakes put in
19 place in Iowa. And I -- I don't know if it's
20 still current, but I believe it was current
21 during the issues -- the time period that we're
22 talking about here (indicating).

23 Q. Okay. So other than the fact that
24 that rate is the rate that you understand
25 Great Lakes to be charging for its intrastate

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 service, is there any other methodology that
3 you use to conclude that .0007 is a reasonable
4 rate for Great Lakes' interstate service?

5 A. I relied upon Great Lakes'
6 assertion to the IUB that that was a reasonable
7 rate.

8 Q. Anything else?

9 A. No. That would be it for now.

10 Q. Okay. Now, I understand in this
11 report, you say, Applying this rate in lieu of
12 the Great Lakes' published F.C.C. tariff rates
13 would reduce Great Lakes' charges to AT&T to
14 1.7 -- \$1.75 million.

15 Is that correct?

16 A. Yes.

17 Q. Now, you're not testifying that
18 Great Lakes should pay AT&T \$1.75 million,
19 correct?

20 A. I'm sorry. I did not understand
21 that question at all.

22 Q. You're not testifying that
23 Great Lakes should pay \$1.75 million to AT&T,
24 are you?

25 A. I don't think that's what that

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 sentence says.

3 Q. Okay. What does it say?

4 A. It says, Would reduce Great Lakes'
5 charges to AT&T to 1.75 million.

6 I think Mr. Fischer's number
7 was about 13.5 million for this time period,
8 and all this is saying is that applying the
9 maximum of point -- of .0007 would -- would
10 generate a number but would not exceed
11 1.75 million.

12 Those are the numbers that are
13 comparable, the 13.5 and the 1.75.

14 Q. So assuming that AT&T's second
15 counterclaim were to proceed to the Court, what
16 damages would AT&T -- would you testify that
17 AT&T is entitled to receive on the second
18 counterclaim?

19 A. They would be entitled to receive
20 the difference between the \$100,000 plus
21 interest computed at the F.C.C. 2 rate, the
22 number that would be generated using the .0007
23 rate. That's what they would receive, and then
24 they would be liable for the -- the difference.

25 Q. Okay. So A- -- so if AT&T

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 proceeded on Counterclaim II and prevailed,
3 they would be entitled to some -- to the
4 \$100,000 recalculated with the .0007 rate? Is
5 that essentially your testimony?

6 A. At a minimum, yes.

7 Q. Okay. And have you done that math
8 to determine what it is that that -- that
9 amount would be?

10 A. I believe I have a schedule; but,
11 no, I've not done that exact calculation.

12 Q. Okay. So is it fair to say that
13 this \$1.75 million that you do calculate in
14 response to Counterclaim II is actually an
15 alternative calculation to the Great Lakes
16 damage calculations performed by Mr. Fischer?

17 MR. HUNSEDER: Object to the form.

18 THE WITNESS: It recalculates
19 Mr. Fischer's analysis saying that the maximum,
20 again, the -- the .0007 --

21 BY MR. CARTER:

22 Q. Um-hum.

23 A. -- lacking any other information
24 as to how the .0007 was derived, would be the
25 -- but using the .0007 as opposed to the

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 F.C.C. 2 tariff rates for Great Lakes, would
3 lend itself to a number of \$1.75 million.

4 Q. Okay. Thank you. I think I
5 understand now.

6 Looking at AT&T's
7 Counterclaim III.

8 Can you describe for me your
9 understanding of this counterclaim?

10 A. Yes. It's my understanding that
11 Great Lakes has refused to provide AT&T with a
12 direct connection and, instead, insists that
13 AT&T delivers its traffic to INS, Iowa Network
14 Services, in Des Moines for delivery to
15 Spencer.

16 Counterclaim III calculates --
17 excuse me -- the impact -- the financial impact
18 that Great Lakes' refusal to provide this
19 direct connection has had on AT&T.

20 Q. Okay. And do you have an
21 understanding of the status of this claim with
22 regard to the litigation?

23 A. It's my understanding that the
24 Magistrate has recommended that this claim be
25 referred to the F.C.C., and that's pending a

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 decision by the District Court Judge.

3 Q. Okay. What information did you
4 look at to prepare this part of your report
5 purporting to calculate the damages for
6 Counterclaim III?

7 A. I looked at the minutes of use in
8 Mr. Fischer's analysis; I looked at the
9 INS Tariff as to what the INS costs that would
10 be -- that would be associated with
11 those minutes of use; I calculated what that
12 represented in terms of a -- of revenue stream
13 from AT&T to INS.

14 Then I -- I took two other
15 factors into account. The move to direct
16 connect from a transport through INS would not

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21 my exhibit.

22 And then, lastly, there's a
23 current dispute between AT&T and INS, and as a
24 result of that dispute, AT&T is not remitting
25 funds to INS that pertain to Great Lakes'

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 traffic. So AT&T has not actually paid INS the
3 associated transport fees with -- it's my
4 understanding, with INS traffic.

5 And so that's not a damage
6 claim because AT&T hasn't paid that amount yet.
7 It's there if -- if it's ruled that they would
8 have to pay it.

9 So I believe I split my exhibit
10 into the two pieces, the part that -- that AT&T
11 has paid and the part that -- that INS asserts
12 AT&T owes and AT&T asserts it does not owe.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

[REDACTED]

10 Q. Okay. And did you provide that
11 analysis that you reviewed with your report?

12 A. I did not. I just said I relied
13 upon AT&T analysis.

14 Q. Okay. And that's something that
15 you've been provided by counsel?

16 A. Yes, I have that analysis --

17 Q. Okay.

18 A. -- provided by -- by counsel --
19 through -- prepared by AT&T but provided to me
20 by -- through counsel --

21 Q. Understand, yes --

22 A. -- counsel did not prepare the
23 analysis.

24 Q. Understand.

25 They -- they were a conduit for

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 you to receive the information?

3 A. That's correct.

4 Q. Okay. And what did -- what steps
5 did you take to verify the accuracy of those
6 calculations?

7 A. I just reviewed them. I mean,
8 they're cost components I'm familiar with.

9 Q. Okay. Did you request underlying
10 data from AT&T to support the calculations?

11 A. I did not.

12 Q. Okay. Now, I understand you to
13 have testified that you prepared two different
14 calculations, one scenario in which AT&T is not
15 ordered to pay INS the disputed amounts between
16 AT&T and INS.

17 A. I -- I -- I think that misstates
18 what I said. I said, I split the -- the
19 analysis into two pieces, one piece where AT&-
20 -- the time period AT&T did pay INS --

21 Q. Okay.

22 A. -- then the analysis continues in
23 the same format but shows for the time period
24 where AT&T has not paid INS --

25 Q. Um-hum.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 A. -- so if AT&T prevails in their
3 litigation, then that bottom part of the
4 analysis drops out --

5 Q. Okay.

6 A. -- and it would only be the top
7 part that would be relevant.

8 If AT&T does not prevail and
9 they do have to pay INS, then it would be the
10 entire spreadsheet that would be relevant.

11 Q. So is it your expert opinion that
12 if AT&T does not prevail against INS and they
13 are required to pay INS by a Court, that
14 Great Lakes would then be required to reimburse
15 AT&T for those payments?

16 A. It's really the obverse of that --

17 Q. Okay.

18 A. -- that if AT&T is not required to
19 pay INS, then AT&T has incurred no damages for
20 that time period and, thus, have no damages to
21 seek against Great Lakes.

22 Q. Okay. So you don't have an
23 opinion, then, as a legal matter whether
24 Great Lakes would, in fact, be required to pay
25 AT&T if AT&T has been ordered by a Court to pay

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 INS?

3 MR. HUNSEDER: Object to the form.
4 That -- that misstates the testimony.

5 THE WITNESS: That's really --
6 you're asking me for a legal conclusion as to
7 the liability between Great Lakes and AT&T.

8 What I did is I wanted to make
9 sure I was consistent that if AT&T has not paid
10 and does not have to pay these funds to INS --

11 BY MR. CARTER:

12 Q. Um-hum.

13 A. -- then AT&T would not include
14 that as a damage element in my calculation.

15 Q. Okay. I understand. I just want
16 to be precise, though, and make sure that
17 you -- I understand how you did the damages
18 calculation. But you're not prepared to offer
19 an opinion as to whether or not there would be
20 liability under that scenario?

21 A. I'm not prepared to issue an legal
22 opinion upon that. That's something the Court
23 would decide, the -- the -- the legal liability
24 that Great Lakes would have.

25 But if they do have liability,

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 then that bottom part of the chart would
3 be the -- the damage element.

4 Q. Okay. I understand. Thank you.

5 MR. CARTER: Let's go off the
6 record and take a -- a quick break.

7 THE WITNESS: I was just going to
8 say it's a good time.

9 MR. CARTER: Great.

10 THE VIDEOGRAPHER: Going off the
11 record. The time is 10:39:36.

12 We're off the record.

13 - - -

14 (Whereupon, a brief recess was taken
15 from 10:39 a.m. to 10:49 a.m.)

16 - - -

17 THE VIDEOGRAPHER: We're going
18 back on the record. The time is 10:49:55.

19 Counsel may proceed.

20 MR. CARTER: Thank you.

21 BY MR. CARTER:

22 Q. Dr. Toof, DIT-8 is the schedule
23 that you prepared in conjunction with this
24 Counterclaim III; is that correct?

25 THE VIDEOGRAPHER: Check your mic.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Make sure your -- check your cell phones, see
3 if they're off.

4 THE COURT REPORTER: Do you want
5 to go off the record?

6 MR. CARTER: We can go off the
7 record.

8 THE VIDEOGRAPHER: Going off the
9 record. The time is 10:51:28.

10 (Pause.)

11 THE VIDEOGRAPHER: We're going
12 back on the record. The time is 10:53:30.

13 Counsel may proceed.

14 MR. CARTER: Thank you.

15 BY MR. CARTER:

16 Q. Dr. Toof, sorry for that brief
17 pause.

18 We're back looking at DIT-8 in
19 your report.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 Q. Not specific, but in that -- in
8 that --

9 A. In that ballpark. No, no. The
10 numbers are on the exhibit, but --

11 Q. Exactly.

12 A. -- yes, that's a fair
13 representation of what the exhibit says for the
14 time period -- for the first part of the time
15 period that AT&T was paying INS' charges.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

[REDACTED]

17 BY MR. CARTER:

18 Q. Okay.

19 A. -- for this -- for an expert
20 report. I mean . . .

21 Q. Okay. Can you tell me, between
22 August 2012 -- well -- excuse -- in your
23 report, there's actually two numbers for
24 August 2012 as the invoice start date, looking
25 at the leftmost column.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 A. Yes.

3 Q. Can you explain for me the reason
4 for two August 2012 invoices?

5 A. INS changed its rate in August
6 from .00819 to .00623. So I just took the
7 August traffic and split it pari passu between
8 the two.

9 Q. Okay. And when INS changed its
10 rates in August of 2012, the cost of the direct
11 connect per minute of use also changed; is that
12 correct?

13 A. That was my intention. It should
14 have.

15 Q. Okay. So the cost per minute of
16 use to AT&T to pro -- to establish and fund a
17 direct connect would have changed in
18 August 2012 merely because INS changed its
19 rates?

20 MR. HUNSEDER: Ob- -- object to
21 the form.

22 THE WITNESS: No. I -- again,
23 I -- just to get a range of the impact that

[REDACTED]

[REDACTED]

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

3 So I just use that uniformly
4 over the whole period --

5 BY MR. CARTER:

6 Q. Okay. But the --

7 A. -- so -- but -- but in answer to
8 your question, by INS changing its rate
9 would -- would not change the cost that AT&T
10 would incur of a direct connection.

11 Q. Because those two issues of --
12 meaning the I- -- the AT&T cost to provide a
13 direct connect as compared to the INS tariffed
14 rates, are not linked? They're not -- one
15 doesn't impact the other one?

16 A. One does not drive the other --

17 Q. Okay.

18 A. -- AT&T would either incur the
19 costs of its direct connection or would pay INS
20 its tariff rates.

24 Q. Okay.

25 A. -- I would assume if this goes

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 forward, there will be a much more detailed
3 analysis and there would be a AT&T witness
4 sponsoring these cost estimates.

5 But this was -- this was me
6 just putting this in to reflect that at this
7 point in time, at this date of discovery, what
8 was a reasonable estimate of AT&T's damages.

9 Q. Okay. Do you know whether it is
10 feasible -- technologically feasible for AT&T
11 to install a direct connect to the -- to
12 Spencer, where Great Lakes' central office is
13 located?

14 MR. HUNSEDER: Object to the form.

15 THE WITNESS: It's my
16 understanding there's no reason it could not be
17 done --

18 BY MR. CARTER:

19 Q. Okay.

20 A. -- that AT&T has asked for it and
21 believes that it's possible.

22 Q. Okay. Do you -- who did you speak
23 with to conclude that it would be possible to
24 install that?

25 A. I asked these questions of AT&T

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 various components of costs.

3 Q. Okay.

4 THE WITNESS: Can we go off the
5 record for a second?

6 MR. CARTER: Sure, that's fine.

7 THE WITNESS: Whenever there's a
8 convenient time for you to take a break.

9 Sorry.

10 THE VIDEOGRAPHER: Going off the
11 record. The time is 11:50:10. This is the end
12 of Tape Number 1.

13 - - -

14 (Whereupon, a brief recess was taken
15 from 11:50 a.m. to 12:03 p.m.)

16 - - -

17 THE VIDEOGRAPHER: We're going
18 back on the record. The time is 12:03. This
19 is the beginning of Videotape Number 2.

20 Counsel may proceed.

21 MR. CARTER: Thank you.

22 BY MR. CARTER:

23 Q. Dr. Toof, we're on Page 43 of your
24 report, I believe --

25 A. Yes, sir.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Q. -- and we're going to talk a bit
3 about Great Lakes' Third Damage Claim that you
4 have discussed there.

5 You say that this third damage
6 claim, which is for quantum meruit or an
7 implied contract, right, so it's a scenario in
8 which the tariff doesn't apply -- you say that
9 this claim is likely preempted by the Filed
10 Tariff Doctrine; is that correct?

11 A. Yes.

12 Q. What's the basis for that
13 conclusion?

14 A. It's my opinion that if -- if
15 there's no -- if a tariff is rejected as being
16 unjust and unreasonable or not -- not
17 applicable, then the Filed Tire -- the Filed
18 Tariff Doctrine would preclude recoveries at
19 the same level of cost.

20 Q. Okay. Does it preclude recoveries
21 at the -- at other levels of cost?

22 A. Well, it would certainly preclude
23 recovery at greater levels of cost. I don't
24 think there's any way you can get more than
25 your filed tariff --

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Q. Okay.

3 A. -- but it's conceivable there's
4 scenarios, such as a quantum meruit argument,
5 where you could recover something from that
6 cost. It depends upon the jurisdiction, the
7 law, Federal law, F.C.C. law, state law.
8 It's -- it's a very -- I -- I do a lot of
9 damages work, and it's a very -- liability
10 and -- and -- and -- and damage -- and the
11 underlying damage theory is very complicated at
12 these issues with a mix between -- especially
13 here, you have a mix between F.C.C. regulation
14 and -- and state law.

15 But it's conceivable. It's
16 conceivable that there is a -- that there is a
17 smaller claim that could be asserted.

18 Q. Okay. In Paragraph 124, you say,
19 Further, under Federal law, AT&T is prohibited
20 from blocking the traffic at issue.

21 What's the basis for that
22 statement?

23 A. It's my understanding -- I forget
24 which order it was -- that an IXC, like AT&T,
25 cannot block traffic to a CLEC, and I believe

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 unless it blocks traffic to every exchange
3 carrier in, I think, that LATA.

4 So AT&T cannot unilaterally
5 say, We will continue to deliver traffic to
6 Qwest, but we will not deliver traffic to
7 Great Lakes. By Federal -- by F.C.C. regs,
8 Federal law, they're prohibited from doing
9 that.

10 Q. And as you sit here, do you have
11 any more specific recollection of where that
12 conclusion is located?

13 A. I believe it's in one of the CLEC
14 reform orders --

15 Q. Okay.

16 A. -- reform orders.

17 Q. Like seventh or eighth report
18 number --

19 A. The seventh or the eighth,
20 which -- you know, I look at them more in terms
21 of years, 201, 20- -- 2001, 2004 --

22 Q. Okay.

23 A. -- because AT&T did want to block
24 some of the higher-cost CLECs, and they were
25 prohibited from doing so, I think, with the

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 proviso that I just mentioned. They could only
3 block if they blocked everybody; they couldn't
4 block selectively.

5 Q. What's your understanding of -- or
6 do you have an understanding of whether that
7 requirement to not block traffic to a
8 Competitive Local Exchange Carrier applies to
9 all types of traffic?

10 MR. HUNSEDER: Object to the form.

11 THE WITNESS: I -- I don't know.

12 BY MR. CARTER:

13 Q. All right.

14 A. I -- I -- you know, I'm familiar
15 with telecommunications traffic, the sort we're
16 talking about here, phone conversations carried
17 by AT&T. I -- you know, there's so many other
18 variations in telecommunications. I focus on
19 this (indicating) --

20 Q. Okay.

21 A. -- but my -- my recollection is
22 that the traffic we're talking about here going
23 to Great Lakes, to the FCPs could not be
24 blocked by AT&T unless it blocked all traffic
25 going to that geographic area.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Q. Do you have an understanding of
3 whether that prohibition of blocking traffic
4 applies equally to AT&T customers' traffic as
5 compared to the traffic that AT&T carries on
6 behalf of other telecommunications companies?

7 MR. HUNSEDER: I object to the
8 form: calls for a legal conclusion.

9 THE WITNESS: I -- I don't know --
10 BY MR. CARTER:

11 Q. Okay.

12 A. -- I do not know.

13 My -- my -- my recollection is
14 it's all traffic carried by AT&T, but I -- I
15 just don't know. That is -- that's a -- that's
16 a -- really, that's a -- that's a legal issue
17 that can be -- that's clearly resolved.

18 Q. Okay. Paragraph 125, you report
19 that CenturyLink is not a traffic pumper, in
20 your words.

21 Can you define what you mean my
22 "traffic pumper"?

23 A. Certainly. The F.C.C. defines the
24 conditions that constitute a traffic-pumping
25 LEC: marketing agreements, sharing of revenues,

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 the four or five cases that I cite.

3 Q. Um-hum.

4 Are you aware of any carrier --
5 any Competitive Local Exchange Carrier that is
6 charging .0007 per minute for its interstate
7 access rates?

8 A. I have no knowledge of that one
9 way or the other.

10 Q. Okay. Are you aware of any
11 contracts in which a Competitive Local Exchange
12 Carrier has voluntarily provided a rate of
13 .0007 for its interstate access service?

14 A. No. I have not done that analysis
15 either.

16 Q. So is -- have you reached a
17 conclusion as to what a market rate would be
18 for interstate access services?

19 A. Lacking any information, which I
20 know has been requested in the discovery
21 process, as to what Great Lakes' cost of
22 service are, I assume their .0007 as their
23 intrastate rates as my starting point on the
24 assumption that if they're charging that on the
25 intrastate side, it would not be an

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 unreasonable starting point as a proxy for the
3 interstate side.

4 Q. Okay. As a practical matter, do
5 you know how much of Great Lakes' traffic
6 exchange with AT&T is interstate versus
7 intrastate?

8 A. I do not know that number.

9 Q. Okay. And have you conducted any
10 analysis -- I believe you might have already
11 answered this question, so I apologize if it's
12 a repeat.

13 But did you conduct any
14 analysis to determine why it is that
15 Great Lakes filed a rate of .0007 with the Iowa
16 Utilities Board?

17 A. No. It's my understanding that
18 AT&T has asked for that data; that it was filed
19 as confidential before the IUB; and that
20 there's a discovery issue now to provide the
21 basis for the .0007 rate.

22 Q. Okay. And if you were provided
23 with cost information by Great Lakes, what
24 would you do with that information, in a
25 general matter, to arrive at a market-based

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 construction claim, that someone did some
3 painting on your dwelling, and you didn't pay
4 for the painting --

5 Q. Okay.

6 A. -- so the -- the measure of the
7 unjust enrichment would be the value of the
8 painting, not the profit that one would make in
9 selling the entire building. That would be a
10 disgorgement claim.

11 Q. Um-hum.

12 Excuse me.

13 So with regard to Great Lakes'
14 claim against AT&T for unjust enrichment, what
15 would be the measure of damages that would be
16 appropriately assessed on an unjust enrichment
17 claim?

18 A. Assuming that they met all the
19 criteria and that AT&T was found liable?

20 Q. Correct.

21 A. Then it would have been -- it's an
22 interesting question, because you wouldn't even
23 get there if the tariff claim had -- had stood
24 place.

25 So it would probably be the

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 .0007 -- you know, capped at the .0007 number
3 that we used before for the -- the market value
4 of the terminating service.

5 Q. Well, can you just describe for me
6 what -- the method -- the -- the methodology
7 you would use to calculate an unjust enrichment
8 damages calculation in this context of
9 Great Lakes' claim against AT&T?

10 A. It would be similar to what I just
11 described with the painter; it would have been
12 that AT&T should have paid -- that the Court
13 finds that AT&T should have paid Great Lakes
14 something --

15 Q. Okay.

16 A. -- and whatever that number is,
17 call it K --

18 Q. Um-hum.

19 A. -- if it's found that -- that AT&T
20 should have paid Great Lakes K and they did not
21 pay Great Lakes K, then AT&T, under an
22 unjust -- unjust enrichment argument, was
23 unjustly enriched by -- by that factor, K.

24 Q. Okay. So would you look at the
25 value received by AT&T --

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 A. No.

3 Q. -- to determine the unjust
4 enrichment?

5 A. "Value" is a hard word to use --

6 Q. Okay.

7 A. -- you would look at what would
8 be -- what was AT&T's unjust enrichment. And
9 in this case, it would be the cost that it
10 should have paid to Great Lakes but for its
11 behavior.

12 Q. And so that -- your testimony is
13 that the measure of damages for an unjust
14 enrichment claim is what AT&T should have paid?

15 A. In this context, the measure of
16 damages for an unjust enrichment would be the
17 revenues that -- that -- that AT&T should have
18 paid under the liability theory to Great Lakes
19 that it did not pay.

20 That's -- that's my
21 understanding of how the unjust enrichment
22 would be calculated.

23 Q. And how did you reach that
24 understanding?

25 A. I've done damages study for

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 40 years; I've done unjust enrichments; I've
3 done disgorgements.

4 Q. Okay. In calculating unjust
5 enrichment under the scenario you've gave
6 earlier about the painter who painted the house
7 and didn't receive payment for that -- for the
8 painting, you would determine what the painter
9 should have been paid by the house -- the owner
10 of the house?

11 A. This really gets tricky as opposed
12 to what they should have been paid, what the
13 value is to the seller of the house --

14 Q. Um-hum.

15 A. -- but, yes, you would come up
16 with a reasonable measure as -- as to, again,
17 the concept -- it's -- it's a claim in equity;
18 it's not a claim in law. So it's a little --

19 Q. Right.

20 A. -- a little fuzzier. But it's --
21 it's how much the defendant gained by not
22 fulfilling his obligation. And how much they
23 gained would be what is a reasonable level --
24 what is a reasonable amount to have paid the
25 painter or Great Lakes.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Q. Okay. So in the context of unjust
3 enrichment, do you agree with me that if this
4 claim is the claim that ultimately is at issue,
5 we've already concluded that the tariff does
6 not apply?

7 A. Yes.

8 Q. And that there was no alternative
9 contract to look at that would have established
10 the value for the services, correct?

11 A. Yes.

12 Q. Okay. And I believe you testified
13 that one of the ways in which you can look at
14 an unjust enrichment claim is to consider the
15 value received by the party that did not pay
16 for the services.

17 Is that accurate?

18 A. Again, you keep using the word
19 "value," and I never used the word "value."

20 MR. CARTER: Could -- could you --

21 THE WITNESS: I -- I --

22 MR. CARTER: -- read back his
23 previous response?

24 THE WITNESS: -- if I did, it
25 was -- it was inappropriate. I don't use the

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

term "value." It's -- it's the -- the -- the cost that was avoided and -- and the value that that cost that was avoided conferred on them.

So I -- I don't want to -- again, it's -- it's -- I want to be clear that it's my opinion that an unjust enrichment claim -- the measure of the damages would have been what AT&T would have paid Great Lakes for this service in -- in -- in -- in a -- in a transaction. And I think it's the same as the quantum meruit; it's the .0007.

Q. Okay. And how did you conclude that AT&T would have paid Great Lakes .0007 for the traffic if there was no tariff that was applicable?

A. I don't think AT&T would have paid. We're now talking about what the legal liability is in terms of it. And lacking the tariff claim and the alternative contract claim, it's my position that a -- that the market price -- the quantum meruit market price is the .0007, and I think that's the reasonable measure to use.

Q. Okay. So it's your testimony that

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 the market price is the measure of damages for
3 both the implied contract and for the unjust
4 enrichment claim?

5 A. For the quantum -- well, if you're
6 talking implied contract is quantum meruit,
7 yes, .0007 would be the same for both, yes.

8 Q. And it's your testimony as an
9 expert witness that the measure of damages,
10 then -- the methodology used to establish
11 damages under Great Lakes' Claims 3 and 4 are
12 the same measure of damages?

13 A. Yeah, the -- the -- the measure of
14 quantum meruit -- in my experience,
15 quantum meruit and unjust enrichment are
16 basically two sides of the same -- with some
17 provisos as to whether applicable or not, but
18 are two sides of the same coin, whether the
19 argument is in law or in equity.

20 Q. Okay. Did you review
21 Mr. Fischer's calculations that he performed
22 with response -- in regard to the fourth damage
23 claim?

24 A. No.

25 Q. You did not.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 And did you ask AT&T for any
3 information that would have allowed you to
4 analyze their revenues associated with
5 delivering calls to Great Lakes?

6 A. No.

7 Q. Did you ask AT&T for any
8 information that would allow you to review
9 costs incurred by AT&T to deliver traffic to
10 Great Lakes?

11 A. With the exception of INS
12 information and direct connect, no.

13 Q. Okay. What do you mean in
14 Paragraph 134 of your report where you say that
15 it's your understanding that a substantial
16 issue lies as to whether Great Lakes would be
17 able to avail itself of an equitable remedy,
18 like unjust enrichment, in view of its unlawful
19 conduct?

20 A. It's my understanding from the
21 work I've done before that a -- a party with
22 unclean hands cannot seek equitable remedy.
23 And if you reach this -- and, again, I don't
24 want to practice law. So this is a legal issue
25 that will be ultimately determined.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 But -- but it's my experience
3 that if you get to this point, then there
4 well -- may well have been a finding that
5 Great Lakes' behavior would preclude it, as a
6 matter of law, from seeking an equitable
7 remedy; and that it's also my understanding --
8 again, I don't want to sound like a lawyer, but
9 I do this a lot -- that -- that you can't seek
10 an equitable remedy -- if there is a remedy in
11 law and to the extent that Great Lakes has
12 sought remedies in law, they may be precluded
13 from seeking a remedy in equity.

14 But that's it for me for
15 practicing law.

16 Q. Are you an expert as to whether or
17 not an unjust enrichment claim would be
18 available to Great Lakes?

19 MR. HUNSEDER: Object to the form.

20 THE WITNESS: I -- I didn't
21 understand that question.

22 BY MR. CARTER:

23 Q. Yeah. I can restate that --

24 A. Yeah.

25 Q. -- that's probably a bad question.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Are you an expert in
3 determining whether or not a equitable remedy
4 is available to a plaintiff?

5 A. I --

6 MR. HUNSEDER: Object to the form.

7 THE WITNESS: -- I -- I -- I've
8 computed damages under the various theories,
9 but I'm not -- I'm not a lawyer practicing what
10 is the exact law under whether the relief
11 should be sought under law or under equity and
12 whether they qualify. That's a legal
13 conclusion that the Court will reach.

14 So that's -- I'm just saying
15 how I would have calculated damages under one
16 of those two damages scenarios. But I -- it's
17 been my experience that they are exclusive.

18 BY MR. CARTER:

19 Q. Excuse me.

20 Do you intend to offer an
21 opinion as to whether it would be reasonable
22 for AT&T to collect over \$204 million for
23 terminating traffic to Great Lakes and pay
24 Great Lakes nothing for terminating that
25 traffic?

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 MR. HUNSEDER: Object to the form
3 and lacks foundation and -- lacks foundation.
4 That's it.

5 THE WITNESS: The opinions -- as
6 of today, the opinions -- the opinions that I
7 intend to provide at trial are embedded in my
8 expert report. I have not been asked to look
9 at that issue for AT&T.

10 BY MR. CARTER:

11 Q. Okay. Do you know what AT&T's
12 average profit margin is for retail long
13 distance traffic?

14 A. I do not.

15 Q. Do you know what AT&T's average
16 profit margin is for wholesale long distance
17 traffic?

18 A. I do not.

19 Q. Do you know whether -- in a
20 typical long distance call carried by AT&T,
21 whether AT&T would be paying originating access
22 charges to the originating Local Exchange
23 Carrier?

24 MR. HUNSEDER: Object to the form.

25 THE WITNESS: It's my

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 understanding that AT&T would -- would pay
3 whatever tariffed charges the originating LEC
4 would -- would provide --

5 BY MR. CARTER:

6 Q. Okay.

7 A. -- would -- would have by tariff.

8 Q. Do you know whether, with regard
9 to the calls delivered to Great Lakes, AT&T
10 did, in fact, pay originating access charges to
11 the originating Local Exchange Carrier?

12 MR. HUNSEDER: Object to the form.

13 THE WITNESS: I don't know.

14 BY MR. CARTER:

15 Q. Okay. Do you know whether, in a
16 typical call, AT&T would pay terminating access
17 charges to the terminating Local Exchange
18 Carrier?

19 MR. HUNSEDER: Object to the form:
20 overbroad.

21 THE WITNESS: And you're going to
22 have to define "typical call" now.

23 BY MR. CARTER:

[REDACTED]

[REDACTED]

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

[REDACTED]

16 BY MR. CARTER:

17 Q. Okay. Could you describe for me a
18 bit about your -- your Master's degree that
19 you've obtained?

20 A. Yes. Both my Master's degree and
21 Ph.D. are in a field called operations
22 research, which is a multifaceted discipline
23 combining mathematics, economics, finance,
24 management and marketing.

25 Q. Okay. And you obtained those both

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 from Temple University?

3 A. I did.

4 Q. What is a -- someone with an
5 operations research degree, is there a typical
6 job field that you enter after obtaining the --
7 those degrees?

8 A. The degree is closely akin to
9 microeconomics, managerial economics. The
10 focus is more on analysis of issues of the
11 firm, rather than on analysis of issues of the
12 economy in a broader spectrum. That would be
13 more macroeconomics --

14 Q. Sure.

15 A. -- my focus is more microeconomic
16 --

17 Q. Okay.

18 A. -- but more quantitative.

19 When I got my degree, economics
20 was just starting to become more quantitative,
21 microeconomics, where operations research had
22 always been a very quantitatively based
23 discipline.

24 Q. Okay. I understand from your
25 earlier testimony that you're currently a sole

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 proprietorship doing your consulting work.

3 Prior to that, you worked with
4 Ernst & Young and predecessor firms; is that
5 right?

6 A. That's correct.

7 Q. And what were those predecessor
8 firms, if you can recall?

9 A. In 1975, I joined Arthur Young &
10 Company. I stayed there until -- in both the
11 Washington, D.C. and New York office.

12 In 9- -- in late 1977, I left
13 Arthur Young, took a three-month sabbatical to
14 complete my dissertation, joined Ernst & Ernst
15 in February of 1978.

16 Ernst & Ernst went through a
17 number of name changes to eventually become
18 Ernst & Whinney. And then, in 1996, Arthur
19 Young and Ernst & Whinney merged to become
20 Ernst & Young --

21 Q. Okay.

22 A. -- so, basically, I was with
23 Arthur Young, Ernst & Ernst and then
24 Ernst & Young during that whole time period.

25 Q. And then you ended up back at your

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 original firm?

3 A. Yes. I mean, the firms merged
4 again -- the firm that I originally started
5 with merged with my -- with my second firm.

6 Q. Okay. And the time you left Ernst
7 & Young, when was that?

8 A. 1996.

9 Q. Okay. And what was your title at
10 that time?

11 A. I was a partner.

12 Q. A partner.

13 Okay. Is there essentially, in
14 Ernst & Young, as there is in many law firms,
15 kind of two tiers, the partners and associates?
16 Is that fairly typical?

17 A. Yes, yes, there are -- there are
18 partners, equity owners of the firm, and
19 nonequity owners of the firm --

20 Q. Okay.

21 A. -- nonequity employees of the
22 firm --

23 Q. Okay.

24 A. -- so we have some different
25 titles, more steps, but, yes, there are

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 partners and nonpartners.

3 I was a partner --

4 Q. Okay.

5 A. -- I made partner in 1985, I
6 believe.

7 Q. Okay. What was your reason for
8 deciding to leave Ernst & Young?

9 A. I had a lot of responsibilities.
10 A lot of partners and staff reported to me. I
11 was working, I thought, too many hours. And I
12 decided to try and do a little bit of a
13 lifestyle change. And I thought I would
14 basically retire.

15 Didn't work out that way.

16 Q. Okay. So did -- when you left
17 Ernst & Young, did you immediately start
18 engaging in your independent consulting
19 practice or did you wait a period of time?

20 A. I had some clients --
21 Ernst & Young was moving in a different
22 direction than mine. I was head of the
23 Washington, D.C. litigation -- I had two
24 responsibilities; I was head of
25 Washington, D.C. litigation support practice,

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 which will coordinate with Washington, D.C.
3 lawyers for all litigation support, accounting,
4 economic, finance; I was also a member of the
5 national utilities practice. And there, my own
6 area of the expertise was in the fields of
7 utilities and energy practice.

8 What Ernst & Young decided, as
9 did many of the firms then, that they were
10 going to change their views of what sort of
11 consulting services they wanted to offer. So
12 had I stayed with Ernst & Young, I would have
13 been doing something differently than I had
14 been.

15 When I decided to leave Ernst &
16 Young in 1996, they said, You have some client
17 work you're doing now. We have no problem.
18 Continue to serve them. We'll continue to
19 provide you support. We'll continue the
20 billing. Just bill us for it.

21 So there was a transition
22 period after I left where I still continued the
23 work I was doing for existing clients. Then I
24 took about a year's hiatus, moved, bought a
25 small farm out in the suburbs, and thought I

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 would just relax and do nothing --

3 Q. Okay.

4 A. -- but -- but enjoy my life.

5 And then some of my former
6 clients would call me and say, We know you're
7 retired. We have some issues. Could you just
8 look at some documents and give us your
9 thoughts? And the next thing I know, I was
10 working full-time again.

11 So then I tried to scale back
12 again, and it's always this iteration between
13 working too many hours and trying to scale
14 back --

15 Q. Okay.

16 A. -- but it was -- it was nothing
17 that was planned; it was just serendipitous
18 along the way.

19 Q. Okay. While you were at Ernst &
20 Young, did you start to serve in the capacity
21 as an expert witness at that time or did that
22 come later in your career?

23 A. No, while I was at Ernst & Young.

24 Q. Okay. Because that was part of
25 the -- the litigation support practice that you

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 oversaw there?

3 A. I believe the first time I
4 testified as an expert witness was in 1980 --
5 1980.

6 Q. Okay. Do you maintain a Web site
7 for your consulting practice?

8 A. No.

9 Q. How do you generally market your
10 services?

11 A. I don't.

12 Q. Okay. Word of mouth?

13 A. I have an existing client base,
14 and sometimes they'll call me with issues. If
15 I have time, I'll help them with them. But I'm
16 really trying to scale back the amount that I
17 work.

18 Q. Okay. Other than Ernst & Young
19 and the three predecessor firms that you
20 discussed a few moments ago, have you been
21 employed anywhere else?

22 A. You -- I assume you mean in a
23 professional capacity like this, not --

24 Q. Correct.

25 A. Yes. When I left graduate school

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

in 1974, I completed all my coursework and passed my comprehensive examinations. I just had written my dissertation, and I joined a group called the General Research Corporation. And we were a private research group for the Army.

And my clients were a consortium of the Joint Chief of Staffs and the Assistant Secretary of Defense for policy analysis. And my area of expertise was in resource allocation --

Q. Okay.

A. -- and I spent about a year there -- a year and a half before I went to Arthur Young.

Q. And what type of resources were you involved in allocating?

A. I guess none of this is classified anymore.

Q. You can do at a high level. I'm just --

A. At a high level, there would be issues, for example, that North Korea invaded South Korea on April 1st, and June 15th,

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Warsaw -- this is how long ago it was -- Warsaw
3 Pact moves against NATO. So the Generals in
4 the Armies would say, Well, here's the
5 resources we need, because the U.S., at that
6 point, had the capability to fight
7 two-and-a-half full wars at any point in time.

8 It's easy getting people in the
9 battlefield, but those people need fuel; they
10 need weapons; they need shells; they need
11 medicines --

12 Q. Um-hum.

13 A. -- and so they would say, What
14 sort of transportation resources do we need to
15 be able to -- to meet this contingency -- and
16 that's just one contingency. Every day was a
17 different contingency -- and so you would try
18 and figure out what one needed in terms of
19 ships or planes or trucks.

20 And you would do the analysis
21 one of two ways: you would say, Okay, if you
22 want to meet the contingency as stated, here's
23 how much it'll cost. And they would go, Well,
24 that's too much money. And then they'd say,
25 Well, if we have this much money --

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Q. Right.

3 A. -- what's the best way?

4 And so these are some of the
5 planning exercises back then and probably still
6 today --

7 Q. Sure.

8 A. -- that the Armed Forces go
9 through on a continuous basis.

10 Q. Okay. And just so that I
11 understand, then, it was not related to
12 utilities or things of that nature, that became
13 your focus when you moved to your --

14 A. That's correct. When I moved to
15 Arthur Young, I started working for what was
16 then the Federal Energy Office. This is after
17 the first Arab oil embargo -- became the
18 Federal Energy Office, then the Federal Energy
19 Administration, then the Department of
20 Energy -- helping them with somewhere
21 large-scale models, energy resource models.

22 And that's what got me involved
23 with utilities from that -- working with them
24 and then being lent for a year to the New York
25 office that had a large project with Niagara

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Mohawk, which is an Upstate New York electric
3 utility, helping them with their -- planing
4 their models, their forecasting.

5 And then I got involved in the
6 electric utility industry and the energy
7 industry and utilities industry as a natural
8 outgrowth of that.

9 Q. While you were at Ernst & Young or
10 any of the predecessor firms, did you have
11 personal involvement in work related to the
12 Federal Communications Commission?

13 A. Only peripherally at Ernst -- at
14 Ernst, we had a national utility practice: one
15 in Washington, D.C.; one in San Francisco; and
16 one in Seattle, Washington.

17 The group in Washington, D.C.
18 focused on natural gas, electric utilities,
19 water and wastewater issues; the group in
20 San Francisco focused on oil pipeline issues;
21 and the group in Seattle focused on
22 telecommunications issues. But we were one
23 cooperative group, and there were occasions
24 where I would help out the Seattle people or
25 review some work they had done.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 But, basically, my
3 responsibility did not include
4 telecommunications while I was at Ernst &
5 Young.

6 Q. Okay. And do you recall the types
7 of issues that you would help the Seattle
8 office out with?

9 A. I don't -- you -- I -- you know, a
10 lot of work that you do required a second
11 partner review --

12 Q. Okay.

13 A. -- so I would take a look at a
14 cost separation study, for example -- that was
15 one of the big issues that they were doing --

16 Q. Um-hum.

17 A. -- and I would go there maybe for
18 a day a month and just ask them how they did
19 it, check the methodology, check the data
20 sources, just so you have a cleans eye -- a --
21 a -- a second set of eyes looking at the
22 analysis. But it was not my work product; I
23 was reviewing the work product of others.

24 Q. Okay. So you -- when you became
25 more involved -- or did you become more

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 involved in telecommunications issues after you
3 left Ernst & Young?

4 A. Yes.

5 Q. And how did -- how did that come
6 about?

7 A. I believe my first -- I was doing
8 work with Mr. Jim Bendernagel, who is an
9 attorney here at Sidley, and he and I had done
10 some energy projects together, energy
11 litigation. And there were some telecom
12 litigations concerning reselling, reselling of
13 AT&T's tariff.

14 And he said to me, There's an
15 issue here that I -- that I'd like to run past
16 you, and it had to do with this reselling
17 litigation. And so I agreed, and then I
18 started doing telecom -- more telecom work at
19 that point.

20 I did a number of reseller
21 cases, some other issues AT&T had with other
22 vendors, a dispute between Qwest and AT&T, a
23 large dispute between AT&T and At Home, and
24 then I got involved in these access-stimulation
25 issues.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Q. Okay. When you first undertook
3 that case with Mr. Bendernagel, what was the
4 nature of the expert services that you were
5 providing in that case?

6 A. Economic analysis --

7 Q. Okay. And in --

8 A. -- damage claims.

9 Q. -- I think in your report here,
10 you have identified a couple other specific
11 times in which you've worked with AT&T. And
12 that's on Page -- it's Exhibit DIT-1, Page 7.

13 A. DIT-1, Page 7 is my testimony
14 experience --

15 Q. Correct.

16 A. -- not just AT&T.

17 Q. No. I understand. But there's a
18 few --

19 A. Oh --

20 Q. -- samples of AT&T --

21 A. -- I'm sorry. I'm sorry.

22 Yes, yes, yes, yes, yes.

23 Q. So I'm looking at this document,
24 and one of the cases that's referenced is AT&T
25 versus PSE.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 A. Yes.

3 Q. Could -- is that the full name of
4 the company or is that --

5 A. I believe that's its full name.

6 Q. And do you recall what type of
7 case or what issue was --

8 A. That was a large reseller
9 litigation.

10 Q. Okay. And what -- and is this the
11 case, then, where you provided the economic
12 analysis --

13 A. Yes --

14 Q. -- for Mr. Bendernagel?

15 A. -- the economic analysis, the --
16 the -- the -- the regulatory framework, the
17 contract analysis for AT&T's defense of PSE's
18 claims. I don't think I did the AT&T's
19 counterclaim. There was another expert, an
20 accountant, who did the AT&T counterclaim.

21 I just -- I was a rebuttal
22 witness to PSE's witnesses.

23 Q. Okay. AT&T versus PICK,
24 Incorporated?

25 A. I think that was another reseller

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

case. I think that was a fellow who was selling international calling cards and asserted that he had been denied a certain profit because AT&T would not offer him a certain contract tariff. This was in the days of contract tariffs --

Q. Okay.

A. -- and so I had to analyze the issues and whether he met the criteria for the contract tariff and what, if any, damages he would have suffered as a result of -- of his assertions.

Q. Okay. And AT&T versus Qwest Corporation?

A. Yeah, that was a big one. That was -- AT&T was the plaintiff in that case. Qwest was a defendant. It was originally a complaint brought at the F.C.C. that Qwest was offering long distance services before the F.C.C. had authorized it to do so under the terms and conditions under the -- the Communications Act back then.

And I was asked to calculate AT&T's damages as a result of Qwest illegally

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 entering -- oh, so it was originally filed
3 before the F.C.C. The parties agreed that the
4 damage phase would be before an arbitrator --

5 Q. Okay.

6 A. -- so it went to arbitration.

7 And I was asked to calculate
8 AT&T's damages as a result of Qwest's illegal
9 acts in providing long distance service.

10 Q. And is it the case that if you
11 were to provide this exhibit to us today, that
12 you would also add representation of AT&T in
13 the All American case?

14 A. Maybe. I mean, I would -- I would
15 definitely -- and then maybe in the body.

16 This is just where I physically
17 testified --

18 Q. Okay.

19 A. -- you know, most of the projects
20 that I get involve in settle.

21 So I didn't include in here if
22 I'm just deposed. I don't include if I file an
23 expert report but it doesn't go to hearing.
24 These are where I've physically been before a
25 trier of fact.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Q. Okay. So are there other
3 situations, then, in which you've also provided
4 an expert report for AT&T that's not here
5 because you did not testify --

6 A. Yes.

7 Q. -- in the case?

8 Okay. Could you -- could --
9 can you recall those situations?

10 A. Well, as we sit here today, there
11 are three I'm working on. There is
12 AT&T/All American, I provided an expert report
13 the Federal District Court in New York. And I
14 provided two expert reports to the F.C.C. on
15 that issue.

16 I have filed an expert report
17 in Federal District Court in Iowa, and I don't
18 know which district it is -- it's not the
19 district we're in; it's another one --

20 Q. Okay.

21 A. -- with regard to Aventure and
22 FuturePhone.

23 Then we have this proceeding,
24 which, of course, has to do with Great Lakes.

25 I'm trying to think if there's

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 anything else that's open right now or where I
3 provided expert reports for AT&T without
4 testifying.

5 Oh, I -- I -- I did provide an
6 expert report for AT&T in its litigation with
7 At Home Bondholders, and I was deposed in that
8 litigation, but I did not take -- the case
9 settled before I testified.

10 Q. What was the nature of that -- the
11 case?

12 A. AT&T was being sued by a group of
13 unsecured bondholders for breach of fiduciary
14 responsibility in its ownership of the At Home
15 Internet service.

16 Q. And what type of expert analysis
17 you provided there?

18 A. I was asked to critique
19 plaintiffs' damage study and to -- to develop
20 alternative damage studies under AT&T's view of
21 the facts.

22 Q. Have you ever testified in any
23 tribunal about the application of a
24 telecommunications tariff to specific facts?

25 A. Yes.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Q. And what tribunal did you testify
3 about -- about that?

4 A. Oh, actually testified before the
5 tribunal?

6 Well, all the reseller cases
7 had to deal with AT&T's contract tariffs and
8 the interpretation of them and the
9 implementation of them. So we just talked
10 about two of them there. That's the PSE and
11 the PICK case.

12 The Qwest case we discussed had
13 to do with interpretation of the Communications
14 Act with regard to the qualifications to be
15 able to provide long distance service --

16 Q. So --

17 A. -- the two --

18 Q. I'm sorry.

19 A. -- the -- the three recent -- the
20 three traffic-pumping cases are ongoing, but I
21 have not testified other than by expert report
22 before the tribunals or the F.C.C.

23 That was probably -- other
24 issues probably were not tariff-based.

25 Q. Okay. So in these reseller cases

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 that you mentioned, the contract tariff, is it
3 the case that you actually testified about how
4 the contract tariff should be interpreted and
5 applied to the facts there?

6 A. Yes.

7 Q. Okay. And did you, with regard to
8 the Qwest case, interpret and testify as to how
9 the Communications Act should be interpreted
10 and applied?

11 A. Yes.

12 Q. With -- with regard to your
13 service as an expert witness, have you ever
14 represented any telecommunications carrier
15 other than AT&T?

16 A. No --

17 Q. And so it's --

18 A. -- well, it's not exactly right.

19 In a joint issue with AT&T and
20 Verizon, I had been retained jointly, and it
21 had to do with the MCI WorldCom bankruptcy and
22 some bad acts that MCI WorldCom had done.

23 And both parties had prepared
24 me to testify in the bankruptcy, but then
25 Verizon bought MCI, and that pretty much ended

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 that litigation.

3 And AT&T wasn't -- wasn't keen
4 on actually pursuing it, but they would have
5 done it with Verizon, but then Verizon bought
6 MCI. So I was retained by Verizon in that
7 engagement also.

8 Q. Okay. Have you ever performed any
9 work for a Competitive Local Exchange Carrier?

10 A. No.

11 Q. Have you ever performed any work
12 for a conference calling provider?

13 A. I have not.

14 Q. Have you ever been employed by a
15 telecommunications regulator?

16 A. No.

17 Q. Have you ever advised a
18 telecommunications regulator on policy-making
19 issues?

20 A. No.

21 Q. Have you ever drafted a
22 telecommunications tariff?

23 A. I have not.

24 Q. Other than AT&T, has anyone ever
25 hired you to advise them regarding the

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 interpretation of a telecommunications tariff?

3 A. Well, we just talked about
4 Verizon, the -- MCI issue.

5 Q. And that involved the
6 interpretation of a telecommunications tariff?

7 A. Yes, it had to do with tariff and
8 the handling of traffic and --

9 Q. Okay.

10 A. -- termination of traffic.

11 Q. Okay. Have you ever received any
12 specialized training in the review and
13 interpretation of a telecommunications tariff?

14 A. No.

15 Q. Have you ever received any
16 specialized training in the review and
17 interpretation of telecommunications regulatory
18 orders?

19 A. Just my experience in this. But,
20 no, I've never taken any specialized training
21 in how to read an F.C.C. order.

22 Q. Okay. Start at Page 12 of your
23 report.

24 A. Sure.

25 Yes, I'm there.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Q. Now, as an general matter, do you
3 know whether local exchange traffic -- local
4 traffic exchanged between two carriers and long
5 distance traffic would utilize the same
6 switching equipment?

7 MR. HUNSEDER: Object to the form:
8 vague.

9 THE WITNESS: Do you mean
10 intrastate and interstate traffic?

11 BY MR. CARTER:

12 Q. No. I'm meaning local and
13 interstate traffic.

14 A. It may.

15 Q. Okay. And if the calls were to
16 utilize the same switch on the -- at the Local
17 Exchange Carrier's central office, would the
18 cost of operating that switch be the same
19 regardless of whether the call was local or
20 long distance?

21 MR. HUNSEDER: Object to the form.

22 THE WITNESS: I've never studied
23 that, but I believe it would be. I mean, it's
24 just an electric circuit regardless of going in
25 and out.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 BY MR. CARTER:

3 Q. In your experience, has the F.C.C.
4 established the same policies for the cost --
5 for the amounts to be paid for the exchange of
6 local traffic as they have for the exchange of
7 interstate [verbatim] long distance traffic?

8 MR. HUNSEDER: Can you read the
9 question back?

10 - - -

11 (Whereupon, the court reporter read
12 back the pertinent part of the
13 record.)

14 - - -

15 MR. HUNSEDER: Object to the form.

16 THE WITNESS: I can't answer that
17 question. The only thing I ever focused on at
18 the F.C.C. is its regulation concerning
19 interstate traffic. I've never looked at the
20 F.C.C.'s regulation of intrastate or local
21 traffic.

22 BY MR. CARTER:

23 Q. Okay. So you don't know, as you
24 sit here today, what the F.C.C.'s policies are
25 with regard to the amounts that carriers pay

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 one another for the exchange of local traffic?

3 A. Again, I only focus on the F.C.C.
4 regulation vis-a-vis interstate traffic.

5 Q. Okay. What do you -- do tandem
6 switches do?

7 A. It's my understanding tandem
8 switches connect trunks, which are large bodies
9 of lines. So it -- it would not connect to an
10 end user, but it would connect from large
11 flows. For example, AT&T to INS, that would be
12 a tandem switch.

13 My understanding -- I'm not a
14 telecommunications engineer, but that's my
15 understanding of a tandem switch.

16 Q. So in that scenario between AT&T
17 and INS, what is the service that the tandem
18 switch would provide?

19 A. The tandem switch would take the
20 traffic from -- from AT&T -- the trunks that
21 would come -- combine them and take traffic
22 from AT&T on to INS or -- or a tandem switch
23 may take within Clear Lake traffic from AT&T
24 and combine it to different switches that are
25 going to go to different central offices.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 But the way I think about it is
3 tandem switches do not direct traffic to end
4 users. So -- so switches that -- that connect
5 other switches are tandem switches, and
6 switches that connect end users are -- are end
7 user switches or central office switches --

8 Q. Okay.

9 A. -- that's how I think about the
10 difference.

11 Q. What is tandem-switched
12 termination?

13 A. Tandem-switched termination would
14 be -- I assume would be a switching between two
15 trunks of lines that would eventually end at
16 the central office going to the end user.

17 Q. So that -- but that's an
18 assumption on your part?

19 A. Again, I'm not a
20 telecommunications engineer. You know, I don't
21 design these systems. I just -- it's my
22 understanding of how the networks work.

23 Q. Okay. How did you develop that
24 understanding?

25 A. Working in this -- in these

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 arenas, taking a look at tariffs. Some of the
3 tariffs actually have schematics. Taking a
4 look at the cost elements.

5 Q. Anything else?

6 A. No. That's pretty much it.

7 Q. Okay. You say in your expert
8 report that CLEC -- excuse me -- switched
9 access charges are developed for the purposes
10 of recovering some of the costs of operating
11 local networks.

12 That's in -- on Paragraph 31.

13 A. Yes.

14 Q. How much is some of the costs of
15 operating their local network?

16 MR. HUNSEDER: Object to the form.

17 THE WITNESS: I don't think
18 there's a hard-and-fast number. I do know that
19 in reading F.C.C. orders, that that's the --
20 that the F.C.C. clearly has said that -- that
21 costs should be borne by both the end user and
22 traditionally -- now, that's changing under the
23 Connect America Fund order, but, historically,
24 that -- that the F.C.C. has insisted that those
25 costs be shared between the two sides of the

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 transaction.

3 BY MR. CARTER:

4 Q. Okay. And how much does the
5 F.C.C. says end users of a Competitive Local
6 Exchange Carrier must share in that cost?

7 MR. HUNSEDER: Object to the form.

8 THE WITNESS: Well, they don't
9 give a number. They do say that it's illegal
10 for them to bear none of the costs.

11 BY MR. CARTER:

12 Q. It's illegal for them to bear none
13 of the costs?

14 A. None of the costs.

15 Q. That's your testimony?

16 A. Well, that a tariff -- that would
17 you not -- you would not -- under the -- I
18 believe it was Northern Valley, that if the end
19 user did not -- bore none of the costs -- was
20 not charged for the services, there would not
21 be an end user and would -- and the -- the IXC
22 could not be charged switched access fees,
23 because that end user would not be a customer;
24 that a customer must bear some of the costs.

25 Q. And so it's illegal, in your

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 opinion, for a Competitive Local Exchange
3 Carrier not to have their end user bear some of
4 the costs even under a scenario in which access
5 charges are collected by a contract?

6 A. No, that would not be the case.

7 I meant to say under a tariff,
8 that one could not file a tariff and collect
9 under a tariff if the calls were not being
10 terminated to an end user. And the Commission
11 has determined that an end user must bear some
12 of the costs of -- of the -- of the -- of the
13 service that he's being provided with.

14 And -- but -- but parties can
15 do pretty much anything they want under private
16 contract.

17 Q. Okay. And is it your
18 understanding that both ILECs, incumbent LECs,
19 and Competitive Local Exchange Carriers can
20 provide switched access service either
21 according to the terms of a written contract or
22 pursuant to tariff?

23 MR. HUNSEDER: Object to the form.

24 THE WITNESS: I'm not sure. I
25 know CLECs can. That might not be the case

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 for -- it might depend on the size of the ILECs
3 and the type of the ILEC whether they can --
4 whether they can bypass the tariffing
5 provisions by contract. I just don't know.

6 BY MR. CARTER:

7 Q. Okay. Is the same true with
8 regard to services provided by a Local Exchange
9 Carrier to their end user customer?

10 MR. HUNSEDER: Object to the form.
11 The question's vague.

12 BY MR. CARTER:

13 Q. I can restate the question.

14 A. I was going to say I did not
15 understand the question.

16 Q. Sure.

17 So I -- my understanding is --
18 is -- you've testified that with regard to
19 Competitive Local Exchange Carriers, they may
20 provide switched access service either pursuant
21 to contract or a tariff?

22 A. Yes.

23 Q. And that's the special access
24 services they're providing to the interexchange
25 carrier, correct?

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 A. That's correct.

3 Q. Okay. And my question is, is the
4 same choice to provide services pursuant to
5 tariff or pursuant to contract applicable to
6 the services that a Competitive Local Exchange
7 Carrier provides to their end user?

8 MR. HUNSEDER: Objection: calls
9 for a legal conclusion.

10 THE WITNESS: The F.C.C. does not
11 get involved in the relationship -- does not
12 govern the relationship between a CLEC and its
13 end user.

14 So it might be an issue of
15 state law or contract law if it's a
16 certificated carrier, but -- but that's not an
17 area that the F.C.C. regulates, the tariffs
18 between -- to my understanding, it's not an
19 area that the F.C.C. regulates, the -- the
20 tariffs -- the contracts between a CLEC and its
21 end users.

22 BY MR. CARTER:

23 Q. Okay. Paragraph 33 of your
24 report, you say that switched -- switched
25 access charges are generally regulated, either

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 by the F.C.C. or, in Iowa, by the Iowa
3 Utilities Board for intrastate calls.

4 Is that a fair summary --

5 A. Yes.

6 Q. -- not -- not verbatim but a fair
7 summary?

8 A. No, no. That's my understanding,
9 yes.

10 Q. And is it your understanding that
11 even today, a state utility commission would
12 establish the charges that a LEC must assess
13 for intrastate switched access service?

14 MR. HUNSEDER: Objection to the
15 form: it calls for a legal conclusion; it's a
16 very broad question.

17 If you can answer.

18 THE WITNESS: Did you say a LEC
19 or a -- yes, it's -- it's -- it's my
20 understanding, based upon my experience -- and
21 I don't think that this is focused entirely on
22 Iowa -- that the local utility boards, whether
23 it's in Iowa or Alaska or whatever, regulates
24 intrastate traffic, and the F.C.C. regulates
25 interstate traffic.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Almost all my work has been
3 done with F.C.C. and interstate traffic. So I
4 don't have firsthand knowledge of how, as of
5 today, the IUB regulates the switched access
6 transactions between IXC's and LEC's.

7 BY MR. CARTER:

8 Q. Okay. And so you don't know what
9 methodology is established for setting
10 intrastate access charges in Iowa?

11 A. I know that they -- the utilities
12 -- the LEC's in Iowa file tariffs. And I -- I
13 don't know what the basis is for that tariff,
14 but it seems to be regulated. And the
15 documents I've reviewed indicate that those
16 tariffs are regulated from the IUB.

17 I know that the IUB did have a
18 proceeding investigating high-volume access
19 service in -- in Iowa, so I assume that they
20 have regulatory authority over the switched
21 access tariffs on the intrastate traffic side
22 in Iowa. But it's not an area that I've spent
23 a lot of time investigating.

24 Q. Okay. Paragraph 34, you say,
25 Traditionally, the rates for switched --

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 switched access services have been linked to
3 the costs of providing service.

4 A. Yes.

5 Q. Can you define for me what you
6 mean by the word "traditionally"?

7 A. Historically, before some of these
8 -- the -- the introduction of CLECs and price
9 caps and -- but in -- in -- in the old --
10 traditionally, when it first started, when they
11 were all monopolies and the whole idea of
12 regulation was to substitute for a competitive
13 market by regulation, and the typical
14 regulation was a cost-of-service methodology.

15 Q. Okay. And does that traditional
16 method of -- of setting rates with respect to
17 access service linked to the costs of providing
18 service apply today to Competitive Local
19 Exchange Carriers?

20 A. I do not believe it does.

21 Q. Okay. Paragraph 36 -- we talked
22 briefly about this already, I believe, about
23 this notion that you have in your report that
24 The F.C.C.'s rules pertaining to switched
25 access charges require that the end user share

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 A. That's fine.

3 Q. -- and then we will -- we will do
4 that.

5 Dr. Toof, the End User Common
6 Line charge, do you know whether the F.C.C. has
7 ever established whether that charge -- an End
8 User Common Line charge must be assessed by a
9 Competitive Local Exchange Carrier?

10 MR. HUNSEDER: Object to the form:
11 calls for a legal conclusion.

12 THE WITNESS: I do not know
13 whether they have specifically said that the
14 End User Common Line charge must be assessed --
15 as I said, I believe that the F.C.C. does not
16 directly get involved in the relationships
17 between a CLEC and its end users.

18 The -- my understanding is the
19 F.C.C. has opined that should a CLEC not charge
20 its end users for telecommunications service,
21 then it's not a tariff service, and -- and --
22 and they would have to -- the only recourse
23 they would have to collect switched access fees
24 from an IXC would be by contract, but they
25 couldn't do it under tariff.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 sorry to talk over you.

3 Can -- can you restate the
4 question?

5 MR. CARTER: I -- I can repeat it.

6 MR. HUNSEDER: Okay. Thank you.

7 I'll wait till you finish this time.

8 BY MR. CARTER:

9 Q. Under -- are local exchanges
10 established pursuant to state or Federal law?

11 A. I believe they are established
12 pursuant to -- for -- the ones I'm experienced
13 with are -- are established pursuant to state
14 regulation.

15 Q. Okay. Do you know what a LATA is?

16 A. Yes.

17 Q. What's a LATA?

18 A. Local area transit -- it's -- it's
19 a defined area where you provide service, like
20 a exchange. I forget what the exact acronym
21 is.

22 Q. Do you know if a LATA is bigger or
23 smaller than an exchange?

24 MR. HUNSEDER: Object to the form.

25 THE WITNESS: I believe it's

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 bigger.

3 BY MR. CARTER:

4 Q. Okay. Do you know whether LATAs
5 are established pursuant to state or Federal
6 law?

7 A. I don't know.

8 MR. CARTER: Okay. Let's mark
9 this as Exhibit -- it's TOOF-10 -- -11. Thank
10 you.

11 - - -

12 (Whereupon, F.C.C. Memorandum
13 Opinion and Order, In the Matter
14 of AT&T Corp. versus Alpine
15 Communications, LLC, et al. was
16 marked, for identification
17 purposes, as Exhibit Number
18 TOOF-11.)

19 - - -

20 MR. HUNSEDER: It's 11?

21 MR. CARTER: It is 11.

22 MR. HUNSEDER: Okay.

23 MR. CARTER: There were two 11s.

24 So I was slightly confused there for a moment.

25 MR. HUNSEDER: Thanks.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 BY MR. CARTER:

3 Q. Dr. Toof --

4 A. Oh, I'm sorry. She normally gives
5 them to me.

6 Q. Dr. Toof, the document you've been
7 provided is a decision of the Federal
8 Communications Commission in the case AT&T
9 versus Alpine Communications; is that right?

10 A. Yes.

11 Q. And for the record, it's 27 F.C.C.
12 Record 11511, released on September 12th, 2012.

13 And I believe that you talked
14 about this order in your expert report; is that
15 right?

16 A. Yes.

17 Q. Okay. And so do you have a
18 familiarity with this order?

19 A. I do.

20 Q. Okay. I wanted to direct you
21 to -- it's Paragraphs 31 through 34 of this
22 order.

23 A. Yes.

24 Q. Okay. And here in this order,
25 AT&T contend -- you know, had lodged this issue

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 about certain defendants, Mutual, Alpine, and
3 Preston, violating their NECA Tariff by
4 charging for transport service outside of their
5 local access and transport areas, or LATA.

6 And Paragraph 34 talks about
7 AT&T arguing that the provision of the tariff
8 there requires switched access services to be
9 provided in the same LATA as the end user's
10 premises where the calls originate or
11 terminate.

12 Did this language, in your
13 reviewing of this order in the discussion of
14 LATA, cause you at all to consider whether or
15 not the requirement to be a certificated
16 carrier in a particular exchange was a
17 requirement that the F.C.C. would find relevant
18 to determining whether interstate switched
19 access charges were applicable?

20 A. No.

21 Q. It does not.

22 So it doesn't cause you to
23 wonder whether, from a Federal perspective, the
24 area that the F.C.C. would look at is the LATA,
25 as compared to the exchange?

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 MR. HUNSEDER: Object to the form.

3 THE WITNESS: No.

4 BY MR. CARTER:

5 Q. Okay. And you -- and that's
6 despite the fact that you've seen no F.C.C.
7 order that tethers the ability to collect
8 switched access charges to being a certificated
9 carrier in a particular exchange?

10 MR. HUNSEDER: Object to the form.

11 THE WITNESS: Again, as I think I
12 explained before, the basis for my opinion is
13 the IUB order, the requirement that they
14 provide functional equivalency and the tariffs
15 of the benchmark ILEC that talk about switched
16 access calls being delivered in the LEC service
17 area.

18 BY MR. CARTER:

19 Q. So if a carrier is -- when does a
20 carrier need to receive certification to serve
21 a particular exchange?

22 MR. HUNSEDER: Objection: that
23 calls for a legal conclusion. And I object to
24 the form.

25 THE WITNESS: What -- what do you

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 mean by "serve"?

3 BY MR. CARTER:

4 Q. Do you have an understanding of
5 when a Competitive Local Exchange Carrier is
6 required to go to the Iowa Utilities Board and
7 receive a CPCN?

8 A. It's --

9 MR. HUNSEDER: Object to the form:
10 calls for a legal conclusion.

11 THE WITNESS: It's my
12 understanding that a Competitive Local Exchange
13 Carrier in Iowa cannot provide service without
14 having a certificate of convenience and
15 necessity issued by the state --

16 BY MR. CARTER:

17 Q. Okay. And --

18 A. -- so it would be a -- a
19 prerequisite.

20 Q. Okay. And does that -- do you
21 have knowledge one way or the other whether
22 that certificate perm -- once it's obtained,
23 permits a carrier to serve any exchange in Iowa
24 or specific exchanges?

25 MR. HUNSEDER: Object to the form

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 and calls for a legal conclusion.

3 THE WITNESS: It's my
4 understanding that it is limited to specific
5 areas to be served.

6 BY MR. CARTER:

7 Q. And when you say "to be served,"
8 what do you mean by that?

9 MR. HUNSEDER: Objection: calls
10 for a legal conclusion. Object to the form.

11 THE WITNESS: The areas where they
12 can sell their service.

13 BY MR. CARTER:

14 Q. Which service?

15 A. Telecommunications services.

16 Q. Any telecommunications service?

17 A. Whatever telecommunications
18 services that are covered by their certificate.
19 But that's a pretty broad spectrum of services
20 that can be offered under a certificate.

21 But -- for example, it's --
22 it's -- in Iowa -- I take it back. That was in
23 Utah.

24 But it's -- it's my
25 understanding that -- that you have to --

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 you -- you specify the area that you want to
3 serve when you file for the certificate, and
4 you have to serve in that area.

5 That was one of the issues that
6 the Iowa Utility Board raised with Great Lakes,
7 that they were not serving in their designated
8 area, and threatened to withdraw its
9 certificate if Great Lakes did not live up to
10 its -- its certificated obligations and serve
11 in its area -- designated area.

12 So, for example, the way I read
13 the Iowa orders, Spencer was not in an area
14 where they could serve, but Lake Park would be,
15 which is my understanding as to why Great Lakes
16 may have moved its FCP platforms to
17 Lake Park --

18 Q. Um-hum.

19 A. -- so that's the basis for my
20 understanding of where you can serve, where you
21 cannot serve.

22 Q. Do you have an opinion as to
23 whether a Competitive Local Exchange Carrier
24 must be certificated to serve every exchange in
25 which it is providing transport services?

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 MR. HUNSEDER: Object to the form
3 of the question: calls for a legal conclusion.

4 THE WITNESS: That's -- I do not
5 have an opinion on that.

6 Transport service as opposed to
7 termination service?

8 BY MR. CARTER:

9 Q. That's correct.

10 A. I -- I never looked at it from a
11 transport service. I focused it on termination
12 service.

13 Q. Okay. So as you sit here today,
14 you don't have an opinion on whether a carrier
15 that's not certificated to provide local
16 exchange service in a particular exchange
17 could, nevertheless, provide a transport
18 service in that exchange to the -- to any of
19 the IXC's?

20 MR. HUNSEDER: Objection to the
21 form.

22 THE WITNESS: Well, INS isn't --
23 provides no termination service, but they
24 provide transport service. So I'm sure there's
25 scenarios that one could come up with where --

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 where the -- where the LEC provides transport
3 service without termination. I think INS is an
4 example. I'll just --

5 BY MR. CARTER:

6 Q. Um-hum.

7 And in that -- in that
8 scenario, do you know -- do you have an opinion
9 one way or the other of whether that carrier
10 would be required to get a certificate of
11 public convenience and necessity in order to
12 provide that service?

13 MR. HUNSEDER: Object to the form.

14 THE WITNESS: I don't know. I
15 know that -- that INS filed, I believe, with
16 both the State of Iowa and the F.C.C. for
17 authorization to serve. I don't know whether
18 they have a certificate or not or just a
19 blanket authorization to serve.

20 BY MR. CARTER:

21 Q. Okay. At the bottom of Page 34,
22 Paragraph 93, you talk about the CenturyLink
23 tariff and its requirements for -- or
24 definitions for end user and customer of a
25 foreign or interstate telecommunications

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
2 appreciate that I'm on the clock with the
3 breaks, so . . .

4 Paragraph 104, Page 38 of your
5 report, you state that As a matter of common
6 sense, a premises of an end user would
7 necessarily require an area that is separate
8 from the carrier's facility.

9 And this is here -- your
10 discussion about end user premises.

11 Other than common sense, are
12 you relying on anything in concluding that the
13 Federal Communications Commission would require
14 an end user to have an area that is separate
15 from the carrier's facility?

16 A. Again, this is -- the whole issue
17 of end user's premises is one that's come up in
18 many of these traffic-pumping litigations --

19 Q. Um-hum.

20 A. -- and what constitutes an end
21 user's premises has -- has been listed. So
22 there's a lot of -- there's a body of findings
23 here.

24 But in my mind, common sense is
25 that an end user's premises is his premises;

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 it's not your premises --

3 Q. Um-hum.

4 A. -- whether you put it in by tariff
5 or not that says, Well, this is going to be
6 your premises.

7 But it's -- it's just basically
8 my opinion --

9 Q. And --

10 A. -- there's no F.C.C. -- I have no
11 F.C.C. cite here for this. That's why it says
12 "common sense."

13 Q. Okay. Do you know -- I think I
14 know the answer to this question, but let me
15 just ask.

16 Do you know what type of
17 premises or facility or -- that Great Lakes
18 actually provides to the free calling
19 providers?

20 A. I -- I -- yes, I believe they
21 provide rack space within their -- well, it
22 used to be within their central office. I
23 assume it's just -- I don't know how they're
24 defining this building in Lake Park --

25 Q. Um-hum.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 A. -- but it would just be rack space
3 in that building if they've actually moved the
4 servers there.

5 Q. And do you know one way or the
6 other about whether that rack space is secured
7 in some way?

8 A. I'm not sure. It may be behind
9 grates. I don't know that it's individual
10 grates for each server or if it is just one set
11 of grates set apart from the central office
12 facilities.

13 But I seem to recall seeing
14 some photos that showed a grated wall, but it
15 might have been for all of the servers, not for
16 an individual server.

17 Q. Okay. Have you visited many
18 central offices?

19 A. No.

20 Q. Okay. And in your experience, is
21 it common for a Local Exchange Carrier to
22 permit certain high-volume customers to locate
23 equipment within their -- within their central
24 office or their facilities?

25 MR. HUNSEDER: Object to the form.

1 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 Go -- go ahead.

3 THE WITNESS: It certainly was for
4 the traffic-pumping CLECs. That was pretty
5 much the model.

6 BY MR. CARTER:

7 Q. What about for -- for others?

8 A. I don't know --

9 Q. Okay.

10 A. -- you know, but -- but that was
11 certainly the model for the -- the
12 traffic-pumping CLECs.

13 Q. Do you know whether AT&T provides
14 a colocation service where high-volume
15 customers could locate equipment in a central
16 office?

17 A. I think they may for some of their
18 wholesale customers.

19 Q. Okay.

20 MR. CARTER: Okay. Why don't we
21 take the break? Because I may have a couple
22 more questions. But we'll go off the record
23 now.

24 THE VIDEOGRAPHER: Off the record.
25 The time is 4:00.

C E R T I F I C A T E

DISTRICT OF COLUMBIA:

I, Cindy L. Sebo, a Notary Public within
and for the Jurisdiction aforesaid, do hereby
certify that the foregoing deposition was taken
before me, pursuant to notice, at the time
and place indicated; that said deponent was by me
duly sworn to tell the truth, the whole truth,
and nothing but the truth; that the testimony of
said deponent was correctly recorded in machine
shorthand by me and thereafter transcribed under
my supervision with computer-aided transcription;
that the deposition is a true record of the
testimony given by the witness; and that I am
neither of counsel nor kin to any party in said
action, nor interested in the outcome thereof.

Cindy L. Sebo, RMR, CRR, RPR, CSR,

CCR, CLR, RSA, LiveDeposition

Authorized Reporter and Notary Public

E R R A T A

I wish to make the following changes,
for the following reasons:

PAGE LINE

35 - 21 CHANGE: "switch" to "switched"

REASON: typographical error

46 - 4 CHANGE: "half a" to "one and a half"

REASON: typographical error

67 - 3 CHANGE: "a AT&T" to "an

REASON: typographical error

68 - 24 CHANGE: "flow" to "flows"

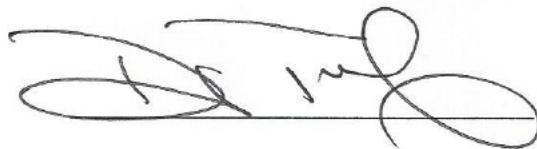
REASON: typographical error

70 - 9 CHANGE: "file" to "filed"

REASON: typographical error

71 - 4 CHANGE: "ILECs" to

REASON: typographical error



WITNESS' SIGNATURE

12/5/2014

DATE

E R R A T A

I wish to make the following changes,
for the following reasons:

PAGE LINE

80 - 11 CHANGE: "and" to "in"

REASON: typographical error

92 - 3 CHANGE: "reliability" to "reality"

REASON: typographical error

142 - 2 CHANGE: "to exchange" to "interchange"

REASON: typographical error

169 - 20 CHANGE: "somewhere" to "their"

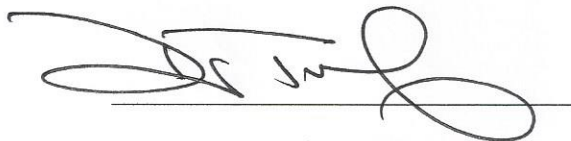
REASON: typographical error

202 - 9 CHANGE: "lease" to "least"

REASON: typographical error

206 - 20 CHANGE: "notes" to "notice"

REASON: typographical error



WITNESS' SIGNATURE

12/15/2014

DATE

E R R A T A

I wish to make the following changes,
for the following reasons:

PAGE LINE

211 - 19 CHANGE: "file" to "filed"

REASON: typographical error

250 - 5 CHANGE: "switch" to "switched"

REASON: typographical error

____ CHANGE: _____

REASON: _____

____ CHANGE: _____

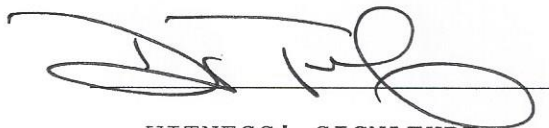
REASON: _____

____ CHANGE: _____

REASON: _____

____ CHANGE: _____

REASON: _____



WITNESS' SIGNATURE

12/5/2014

DATE

EXHIBIT 14

**Rebuttal Expert Report of Michael Starkey,
with Exhibit E (November 5, 2014)**

**HIGHLY CONFIDENTIAL
MATERIALS OMITTED**